

# DyMac Global LTD: TERMS AND CONDITIONS OF SALE

## 1 Interpretation and Definitions

In these conditions, unless the context otherwise requires, the following terms shall have the following meanings.

- 1.1 "Buyer" means the person, firm or company who accepts a quotation of the Seller for the sale of the Goods and (where appropriate) the provision of the Work by the Seller or whose order for the Goods and/or Work is accepted by the Seller.
- 1.2 "Conditions" means the standard terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.3 "Contract" means the contract in accordance with these terms for the purchase and sale of the Goods or, as the case may be, the purchase and sale of the Goods and/or the provision of Work comprising (in the following order of precedence) these terms: any quotation from the Seller to the Buyer, any order made by the Buyer and any confirmation of that order by the Seller.
- 1.4 "Goods" means the Goods (including any instalments of the Goods or any parts for them) which the Buyer agrees to buy from the Seller in accordance with these conditions.
- 1.5 "Seller" means DyMac Global Limited (registered in England under company number 722419).
- 1.6 "Supplier" means DyMac Global Limited (registered in England under company number 722419).
- 1.7 "Work" means the services carried out by the Seller on behalf of the Buyer under these conditions.
- 1.8 "Writing" includes email, telex, cable, facsimile transmission and any comparable means of communication accepted by the Seller.

## 2 Relationship

- 2.1 The Seller shall sell the Goods and carry out the Work (if applicable) and the Buyer shall purchase the Goods and the Work in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written or verbal order of the Buyer which is accepted in writing by the Seller, subject in either case to these conditions, which shall govern the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made, by the Buyer and all orders for the Goods and the Work shall be deemed to be an offer by the Buyer to purchase the Goods and the Work pursuant to these conditions.
- 2.2 These conditions shall apply to all contracts for the sale of the Goods and supply of the Work by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.5 The Seller's employees or agents are not authorised to make any representations concerning the Goods or Work unless confirmed by the Seller in writing. In entering into the contract the Buyer acknowledges that it is not entitled to rely on any such representations which are not so confirmed in writing and the Seller shall not be liable for any loss or damage howsoever arising suffered by the Buyer in reliance on any such representations.
- 2.6 Any advice or recommendation given by the Seller, its employees or agents to the Buyer, its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is relied upon entirely at the Buyer's own risk, and the Seller shall not be liable for any such advice or recommendation which is not so confirmed and the Seller shall not be liable for any loss or damage whatsoever or howsoever arising suffered by the Buyer in reliance upon the advice or recommendation.
- 2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice, or other document or information issued by the Seller shall be subject to correction entirely at the Seller's discretion and without any liability on the part of the Seller.
- 2.8 Any of the DyMac Global Limited's customers (Customer is defined as any company who has engaged with DyMac Global seeking prices or who have placed written Purchased Orders) or associated companies of the customer shall not be permitted to contact any of DyMac Global Limited's sub-contract factories to establish a business relationship what so ever without the prior knowledge of DyMac Global and DyMac Global Limited has provided authority in writing.

## 3 Order and Specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed (in writing) by an authorised representative of the Seller.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Buyer and for ensuring the accuracy of all specifications, patterns, drawings, photographs, samples, designs and information provided by the Buyer to the Seller relating to the Goods and the Work and the Buyer shall supply all such information relating to the Goods and the Work within a reasonable time to enable the Seller to perform the contract in accordance with these conditions.
- 3.3 The Goods and the Work where applicable shall be manufactured and supplied in accordance with the description, specifications, quantity and quality set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 Where any specifications, patterns, drawings, photographs, samples, designs and information relating to the Goods and the Work have been provided by the Buyer the copyright, design right, or other intellectual property in them shall remain the property of the Buyer and where the Goods are to be manufactured, assembled, supplied or any process is to be applied to the Goods by the Seller in accordance with any specifications, patterns, drawings, photographs, samples, designs and information supplied by the Buyer, the Buyer warrants that the use of the specifications, patterns, drawings, photographs, samples, designs and information shall not infringe the patent, copyright, design right, trade mark, industrial property rights, intellectual property rights or any other rights of any third party and the Buyer shall indemnify and keep the Seller indemnified, for all loss, damage, costs and expenses including legal costs whatsoever and howsoever arising resulting from a breach by the Buyer of this clause or which results from the Seller's use of the information aforesaid supplied by the Buyer, in accordance with clause 11 hereof.
- 3.5 The Seller reserves the right from time to time and in its absolute discretion to make any changes in the specification of the Goods and the Work (where applicable) which are required to comply with any applicable safety or other statutory requirement or which does not materially affect the quality or fitness for purpose of the Goods or the Work.
- 3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that if cancelled more than 7 days before delivery then the Buyer must pay the reasonable costs incurred by the Seller to the date of cancellation; but if cancelled less than 7 days before delivery then the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation by the Buyer.

## 4 Price of the Goods/Work

Subject to contrary written agreement between the Seller and the Buyer the price of the Goods and the Work (where applicable) shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order.

All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time all prices may be altered by the Seller without giving notice to the Buyer.

The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and the Work (where applicable) to reflect any increase in the cost to the Seller which is due to any factor beyond the reasonable control of the Seller (including without limitation, foreign exchange fluctuations, currency regulations, taxes and duties and the cost of labour, materials and other manufacturing costs) any change in delivery dates, quantities or specifications for the Goods and the Work (where applicable) which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods other than at the Seller's premises or to arrange for the Goods to be delivered other than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport, craneage, packaging and insurance.

All prices are exclusive of value added tax, which shall be payable by the Buyer to the Seller in addition to any other sums due at the rate ruling on the date of the Seller's invoice.

## 5 Terms of Payment

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of Goods and the Work prior to, on, or at any time after delivery of the Goods or provision of the Work.
- 5.2 The Buyer shall pay the price of the Goods and/or Work, and all other sums due to the Seller, (without deduction) within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.4 cancel the Contract for the supply of the Goods and/or Work, or suspend any further deliveries of the Goods, or further provision of Work, to the Buyer;
- 5.5 appropriate any payment made by the Buyer for such of the Goods or Work (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.6 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above Barclays Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.7 The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set off or counterclaim which the Buyer may have or allege to have for any reason whatsoever.

## 6. Delivery

- 6.1 Unless otherwise agreed in writing delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection. Save where the Goods are to be collected by the Buyer from the Seller's premises the Buyer shall be deemed to have collected the Goods from the Seller's premises at the time the Goods are handed over at the Seller's premises to the haulage contractor engaged by the Seller on behalf of the Buyer to transport the Goods to the Buyer's premises. The cost of such transportation shall be borne by the Buyer.
- 6.2 Any dates for delivery quoted by the Seller in relation to the Goods are estimates only and the Seller shall not be liable for any loss or damage whatsoever due to the failure by the Seller to deliver the Goods (or any of them) promptly or at all. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing.
- 6.3 The Seller has the right to deliver the Goods in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.4 The Seller may deliver the Goods by separate instalments and each separate instalment shall constitute a separate contract and shall be invoiced and paid for in accordance with these conditions. The failure by the Seller to deliver any one or more of the instalments on the due dates shall not entitle the Buyer to treat the whole contract as repudiated.
- 6.5 If the Seller fails to deliver the Goods and (where applicable) to carry out the Work for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is liable to the Buyer for a breach of these conditions the remedies of the Buyer shall be limited to those set out in Clause 10.8.
- 6.6 Notwithstanding any other provision of these terms and conditions the failure of the Buyer to pay for any one or more of the said instalments of the Goods on the due dates shall entitle the Seller (at the Seller's absolute discretion) without notice to suspend further deliveries of the Goods pending payment by the Buyer and/or to treat the contract as repudiated by the Buyer.
- 6.7 If the Buyer fails to take delivery of the Goods at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's default) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.8 store the Goods until actual delivery and charge the Buyer for all reasonable costs (including insurance) of storage; or
- 6.8.1 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the contract or charge the Buyer for any shortfall below the price under the contract.
- 6.8.2 The Seller may cancel this contract at any time before the Goods are delivered by giving notice in writing. The Seller shall not be liable for any loss or damage whatsoever or howsoever arising from such cancellation.

## 7. Risk and Title

- 7.1 The Goods shall be at the Buyer's risk from:
- 7.2 in the case of the Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 7.3 in the case of the Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time when the Seller had tendered delivery of the Goods.
- 7.4 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due and until there are no other sums whatever due from the Buyer to the Seller under the Contract or these conditions.
- 7.5 Until such time as the title in the Goods passes to the Buyer in accordance with clause 7.2, the Buyer shall:
- 7.5.1 hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Seller's property;
- 7.5.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.5.3 notify the Supplier immediately if it becomes subject to any of the events listed 12.1.4;
- 7.5.4 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 7.6 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until title in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 7.7 The Seller shall be entitled to recover the price (plus VAT) notwithstanding that title in any of the Goods has not passed from the Seller.
- 7.8 Until such time as property in the Goods passes from the Seller, the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 7.6 shall cease.
- 7.9 The Buyer shall not pledge or in any way charge by way of security for any indebtedness to any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 7.10 The Buyer shall insure and keep insured the Goods to the full price against all risks to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so, all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

## 8 Acceptance of the Goods

The Buyer shall be deemed to have accepted the Goods on delivery of the Goods to the Buyer in accordance with clause 6.

After acceptance the Buyer shall not be entitled to reject the Goods which are not in accordance with the contract and where the Buyer accepts or has been deemed to have accepted any of the Goods then the Seller shall have no liability whatever to the Buyer in respect of any of the Goods, except for a breach of the warranty contained under clause 10.1.

Acceptance of the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these conditions.

None of the Goods delivered to the Buyer which are in accordance with the contract will be accepted for return without the prior approval in writing of the Seller on terms to be determined at the absolute discretion of the Seller.

If the Seller agrees to accept any of the Goods for return the Buyer shall be liable to pay a handling charge of not less than 10% of the invoice price of the Goods or such lesser handling charge as the Seller may at its absolute discretion decide and which shall be notified in writing to the Buyer. Any such of the Goods must be returned by the Buyer carriage paid to the Seller in their original packaging and condition.

Any of the Goods returned without the prior approval in writing of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have.

If the Buyer properly rejects any of the Goods which are not in accordance with the contract the Buyer shall nonetheless pay the full price for any such of the Goods unless the Buyer promptly gives notice of rejection to the Seller and at the Buyer's cost returns any such of the Goods to the Seller before the date when payment for the Goods is due.

## 9 Supply of Work

9.1 The Supplier shall use all reasonable endeavours to meet any performance dates for the Work, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Work.

9.2 The Supplier shall have the right to make any changes to the Work which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Work, and the Supplier shall notify the Buyer in any such event.

9.3 The Supplier warrants to the Buyer that the Work will be provided using reasonable care and skill.

## 10 Warranties and Liability

10.1 Subject to the conditions and limitations set out below in these conditions the Seller warrants that the Goods and the Work (where applicable) will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the earlier.

10.2 The above warranty is given by the Seller subject to the following conditions:

10.2.1.1 the Seller shall be under no liability in respect of any defect in the Goods or the Work arising from any drawing, design or specification supplied by the Buyer or where the defect is as a result, whether direct or indirect, of any preparatory work carried out by the Buyer in anticipation of the Work;

10.2.1.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's prior written approval;

10.2.1.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods and the Work (where applicable) has not been paid by the due date for payment;

10.2.1.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

10.3 All terms, conditions and warranties (whether implied or made expressly) whether by the Seller or its servants or agents or otherwise (other than those express warranties set out in these conditions) relating to the Goods and/or Works, and without prejudice to the generality of the foregoing of any terms, conditions, warranties relating to fitness for purpose, merchantability or condition of the Goods and/or Works, and whether implied by statute common law or otherwise, are excluded to the fullest extent permitted by law.

10.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods and (where applicable) the provision of the Work or their failure to correspond with specifications shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or in the case of defective workmanship in respect of the Work, the completion of the same or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods and Work had been delivered and carried out in accordance with the contract.

10.5 Where any valid claim in respect of any of the Goods or Work which is based on any defect in the quality or condition of the Goods or the Work or their failure to meet specification is notified to the Seller in accordance with these conditions, the Seller shall be entitled to repair or replace the Goods (or the part in question) and/or rectify the Work free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

10.6 Nothing in these Conditions shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors.

10.7 Subject to clause 10.6, the Seller shall not be liable to the Buyer whether for any breach of these conditions or the contract or by reason of any representation or any implied warranty, condition or other term or any duty at common law for any direct or indirect loss, damage (whether for loss of profit or otherwise), costs, expenses or other claims whatsoever and howsoever arising suffered by the Buyer or liability to third parties incurred by the Buyer (and whether caused by the negligence of the Seller, its employees, agents, servants or otherwise) which arise out of or in connection with the supply of the Goods and the supply of the Work or their use or resale by the Buyer, except as expressly provided in these conditions.

10.8 Not withstanding any other provision of these conditions in the event of any breach of the contract or of these conditions by the Seller the remedies of the Buyer shall be limited to damages and under no circumstances shall the liability of the Seller exceed the price payable for the Goods.

10.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the contract or these conditions by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods or the Work, if the delay or failure was due to any cause beyond the Seller's reasonable control or the fault of the Buyer and prevents performance of the Contract for a period of 3 months. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

10.9.1 Act of God, explosion, flood, tempest, fire or accident;

10.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

10.9.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

10.9.4 import or export regulations or embargoes;

10.9.5 strikes, lockouts or other industrial actions or trade disputes or non-availability of employees (whether involving employees of the Seller or of a third party);

10.9.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

10.9.7 power failure or breakdown in machinery;

10.9.8 weather conditions, transport failures, traffic congestion or any other cause (whether or not of the same nature as the foregoing) which is beyond the control of the Seller.

10.9.9 Defective parts will be replaced or rectified at the manufacturer's discretion and subject to being returned for full examination at client's cost. For export sales, it is expected that labour would be carried out locally and under the review of DyMac Global.

## 11 Indemnity

11.1 If any claim is made against the Seller or Buyer that the Goods or the Work infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, as a result of any information provided by the Buyer to the Seller in accordance with clause 3 aforesaid the Buyer shall indemnify the Seller against all loss, damage, costs and expenses awarded against or incurred by the Seller in connection with the claim, or paid by the Seller in settlement of the claim, and the Buyer warrants that:

11.1.1 if requested, the Seller is given full control of any proceedings or negotiations in connection with any such claim;

11.1.2 the Buyer shall give the Seller all reasonable assistance for the purpose of any such proceedings or negotiations;

11.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent in writing of the Seller (which shall not be unreasonably withheld);

11.1.3.1 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

11.1.3.2 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer in writing (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and

11.1.3.3 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

11.2 Without prejudice to clause 11.1 above the Buyer agrees to indemnify and keep indemnified the Seller, its employees, agents and servants against all loss, damage, claims, expenses and costs (including legal costs and not being limited to financial loss) whatsoever and howsoever arising whether directly or indirectly out of or in connection with any breach by the Buyer of any of its obligations under these conditions or the contract or in connection with the supply of the Goods and the Work or their use or resale by the Buyer.

## 12 Termination and Insolvency of Buyer

12.1 This clause applies if:

12.1.1 the Buyer is in breach of any of its obligations herein; or

12.1.2 execution of any judgement is levied on the Buyer; or

12.1.3 the Buyer enters into any composition or arrangement with its creditors; or

12.1.3.1 the Buyer becomes insolvent, calls a meeting with a view to going into voluntary liquidation or if a petition for winding-up shall be presented or a receiver and/or administrator and/or administrative receiver and/or manager is appointed or if the Buyer has a liquidator appointed over any of its property or assets or enters into an agreement with its creditors or a mortgagee or encumbrancer takes steps to exercise its security; or if the Buyer is presented with an application for an interim order or a bankruptcy petition within the meaning of the Insolvency Act 1986, or if an interim order or bankruptcy order is made against the Buyer or if the Buyer has a liquidator appointed or if a meeting whether formal or informal is called of the Buyer's creditors or any of them or, in Scotland (in addition to such events so far as are applicable detailed above) become not our bankrupt or suffer sequestration to be awarded of the Buyer's estate or effects or suffer any arrestment, charge, pawning or other diligence to be issued or levied upon the Buyer or his estate or effects or suffer any exercise or threatened

exercise of any landlord's hypothec; or

12.1.4 the Buyer ceases, or threatens to cease, to carry on business; or

12.1.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

12.2 On the occurrence of any of the circumstances listed in clause 12.1 then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer, and if the Goods have not been delivered and the Work carried out but not paid for the price of the Goods and the Work and all other sums, whatever due to the Seller under the contract and these conditions shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 13 General

13.1 The contract and these conditions shall be governed by English law in every particular including formation and interpretation and both parties submit to the jurisdiction of the English Courts.

13.2 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

13.3 No waiver by the Seller of any breach of the contract or these conditions by the Buyer shall be considered as a waiver of that right or of any subsequent breach of the same or any other provision or, of the right at any time subsequently to enforce all of the Seller's rights under these conditions or the contract.

13.4 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

13.5 If any dispute arises in connection with this agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.

13.6 Any reference in these conditions to any statutory provision shall be construed as a reference to that statutory provision or as a reference to that provision as amended, re-enacted or extended whichever shall be in force at the time.

13.7 The headings in these conditions are for convenience only and shall not affect the interpretation of these conditions.

13.8 The receipt of money by either of parties shall not prevent either of them from questioning the correctness of any statement in respect of such money.

13.9 These conditions supersede any prior agreement between the parties whether written or oral and any such prior agreements are superseded by these conditions.

All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout these conditions shall include all genders and the plural. These conditions and the contract and all rights under them may not be assigned or transferred by the Buyer except with the Seller's prior consent in writing.

All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under these conditions shall restrict or prejudice the exercise of any other right granted by these conditions or otherwise available to them.

## 14 Jurisdiction

14.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

(i) acknowledges receipt of these conditions; and

(ii) acknowledges and accepts these conditions as governing the trading relationship between the Seller and the Buyer.