



### 1 INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions:
- Arrangements:** the arrangements, events, facilities, services, accommodation and meals (or any of them), as applicable, arranged by the Company for the Client in accordance with the Client's booking, subject to these Conditions;
- Client:** any person, firm, company or other organisation who is the addressee of the Company's quotation or acceptance of order issued by the Company and shall include any personal representative of the Client, any parent or subsidiary company of the Client and any successor-in-title of the Client and any company or entity arising (wholly or partly) by way of any merger, amalgamation, reorganisation or acquisition of the Client;
- Commencement Date:** the date on which the Hire Term begins, being the date stipulated in the Company's acceptance of order issued pursuant to clause 1.8, or such other date as may subsequently be agreed in writing with the Company;
- Company:** Production 78 Limited;
- Conditions:** these Conditions of Supply;
- Confidential Information:** any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential or the information could reasonably be supposed to be confidential;
- Contract:** any contract between the Company and the Client for the supply of Goods and/or Hire Goods and/or Services, incorporating these Conditions;
- Force Majeure:** any event which the Company or the Company's supplier could not, even with all due care, foresee or avoid. Such events may include war or threat of war, riot, civil strife, actual or threatened terrorist activity, industrial dispute, natural or nuclear disaster, adverse weather conditions, fire and all similar events outside the control of the Company or the Company's supplier;
- Goods:** any goods or materials agreed in the Contract to be supplied by the Company to the Client (including any part or parts of them), including any goods agreed to be supplied with, or in relation to, any Services;
- Guest(s):** the individuals who make use of the Arrangements booked by the Client;
- Hire Charge:** the price for (the hire of) the Hire Goods, as applicable from time to time, calculated on a weekly basis and payable throughout the Hire Term;
- Hire Goods:** any goods which the Company has agreed in the Contract to hire to the Client (including any part or parts of them);
- Hire Term:** the period between the Commencement Date and the Termination Date during which the Hire Goods are to be held by the Client in return for payment of the Hire Charge to the Company, subject to earlier termination of the Contract under clause 24;
- Intellectual Property Rights:** any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered;
- Lead Customer:** the person who books the Arrangements on the Client's behalf and who will be the Company's point of contact (and any substitute for this person);
- Services:** any services agreed in the Contract to be performed by the Company for the Client (including any part or parts of them) including, but not limited to, any event management services and any Arrangements which shall form part of those services;
- Supplies:** the Goods and/or the Services, depending on the context;
- Termination Date:** the date on which the Hire Term ends, being the date stipulated in the Company's acceptance of order issued pursuant to clause 1.8, or such other date as may subsequently be agreed in writing with the Company, subject always to earlier termination of the Contract under clause 24.
- 1.2 All references to "Goods" shall include Hire Goods except where otherwise indicated.
- 1.3 A reference to a "clause" is to a clause of these Conditions. Clause headings shall not affect the interpretation of these Conditions.
- 1.4 Any reference to "parties" means the parties to the Contract and "party" shall be construed accordingly.
- 1.5 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 Words in the singular include the plural and in the plural include the singular.
- 1.7 All quotations are made and all orders are accepted by the Company subject only to these Conditions, which shall prevail to the exclusion of any other terms including any conditions, warranties or representations written or oral, express or implied, even if contained in any of the Client's documents which purport to provide that the Client's own terms shall prevail. Any representations about any Supplies shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company.
- 1.8 The placing of an order or booking following any quotation or other indication of price shall not be binding on the Company unless and until accepted by the Company in writing.

- 1.9 The Client confirms that anybody entering into a Contract on the Client's behalf has all necessary authority to do so and that the Client shall indemnify the Company against all losses, costs charges and expenses which may be incurred by the Company if this is not the case.
- 1.10 The Company has no obligation to accept any variation to the Contract requested by the Client, whether by addition, substitution or omission and no such request shall be deemed to be accepted in the absence of the Company's written agreement to the variation.
- 1.11 The price for the Supplies shall be the price confirmed by the Company in its written notification of acceptance of the Client's order or booking pursuant to clause 1.8.
- 1.12 Unless otherwise stated, the price for the Supplies will be exclusive of Value Added Tax.
- 1.13 The Company shall be entitled to invoice the Client for the price of the Supplies on or at any time after acceptance of the Client's order or booking.
- 1.14 Unless specifically stated otherwise in these Conditions, settlement terms will be net 30 days from the date of the corresponding invoice.
- 1.15 The time of payment of the price shall be of the essence of the Contract.
- 1.16 All payments shall be made without any deduction, withholding or set-off.
- 1.17 The Company may appropriate any payment made by the Client to such of the Supplies as the Company may think fit and may set off any amount owed by the Company to the Client against any amount owed by the Client to the Company on any account whatsoever.
- 1.18 Without limiting any other remedy available to the Company, failure by the Client to pay any invoice by its due date shall entitle the Company to charge interest at the rate of eight percent (8%) per annum above National Westminster Bank Plc's base lending rate from time to time calculated on a daily basis (whether before or after any judgment) until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 1.19 The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 1.20 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

## **2 The Contract**

- 2.1 With respect to all bookings, a Contract shall come into existence as soon as the Company confirms the receipt and acceptance of the Client's purchase order or confirmation of the Company's quotation, in writing.
- 2.2 The Client agrees that the Lead Customer has the authority to deal with the Company on the Client's behalf. If for any reason there is a change in the Lead Customer, the Client should notify the Company in writing immediately. The Company can only accept bookings if the Lead Customer is a minimum of 18 years old.
- 2.3 The Client must check all documents (including any tickets or vouchers) which the Company sends to the Client and contact the Company at once if any information appearing on the quotation or any other document appears to be inaccurate or incomplete as it may not be possible to make changes later.

## **3 Payment of Amounts Due**

- 3.1 A deposit of 50% of the total cost of the Arrangements must be received by the Company within 7 days of the date that the Company sends the Client confirmation of the receipt and acceptance of the Client's purchase order pursuant to clause 2.1. The balance must be paid at least 28 days prior to the start of the Arrangements. If the booking is made within 28 days of the start date, payment in full is required at the time of booking. The Company will provide the Client with a VAT invoice to assist the Client in raising payment. Payments can be made via online BACS or CHAPS payment to the account detailed on the Company's VAT Invoice.
- 3.2 If all monies are not received by the Company in full and on time the Company shall treat the Client's booking as cancelled by the Client and the cancellation charges set out in clause 9 will be payable by the Client. Where the Company holds off cancelling (although the Company is not obliged to do so) because the Client has asked the Company for time to pay but the Client fails to do so, the Client must pay the cancellation charges shown in clause 9 depending on the date that the Company reasonably treats the Client's booking as cancelled.

## **4 Special Requests**

- 4.1 The Client must advise the Company in writing at the time of booking of all special requests. Although the Company will endeavour to pass any reasonable requests on to the relevant supplier, the Company regrets that the Company cannot guarantee any request will be met unless the Company has specifically confirmed this. For the Client's/the Guest(s) own protection, the Client should obtain confirmation in writing from the Company that the Client's/the Guest(s) request will be complied with (where it is possible for the Company to give this) if the Client's/the Guests(s) request is important to the Client. Confirmation that a special request has been noted or passed on to the supplier or the inclusion of the special request on the Client's confirmation invoice or any other documentation is not confirmation that the request will be met. Unless and until specifically confirmed, all special requests are subject to availability.
- 4.2 Should any additional charge not included in the total price stated on the Company's confirmation letter become payable (for example costs relating to a special request made by the Client/any Guest(s)), a revised letter will be sent to the Client prior to the start of the Arrangements showing the extra charge. Payment of such extra charges must be paid on request.

## **5 Special Requests**

- 5.1** Prices quoted to the Client by the Company are correct to the best of the Company's knowledge at the time that the Company's quotation is issued. It is possible that prices may change before the Client actually books the Arrangements. The Company will advise the Client of any change in the price or error in the price of which the Company is aware at the earliest opportunity before the Client books the Arrangements. The Company reserves the right to make changes to and correct errors in prices at any time before the Company sends the Client confirmation of the receipt and acceptance of the Client's purchase order pursuant to clause 2.1. Once the Company has sent the Client confirmation of the receipt and acceptance of the Client's purchase order pursuant to clause 2.1 then subject to these Conditions, the price will not change.
- 5.2** Please note that the prices quoted to the Client apply to the minimum number of Guests required for the event. The minimum number price must be paid for all bookings. Should the number of Guests included in the booking exceed the minimum, it is likely that the overall price may increase proportionately. The Client will be required to pay the revised price.

## **6 Website Descriptions and Quotes**

- 6.1** All website descriptions and quotes are made in good faith and every reasonable care is taken to ensure their accuracy. However, errors may occasionally occur. The Company cannot accept any liability for any errors or omissions except where these have arisen due to the Company's negligence. The Company reserves the right to make changes to and correct errors in the Company's website descriptions and quotes at any time.
- 6.2** Events advertised and sold by the Company as taking place in or close to any particular city/town may include activities in locations that the Company considers to be within a reasonable distance from the Client's accommodation and/or that city/town. As a general guide the Company would consider a reasonable distance to be approximately 20 miles although this may be more for some exclusive activities.

## **7 Changes and Cancellations by the Company**

- 7.1** Occasionally, the Company has to make changes to and correct errors in website and other literature both before and after bookings have been confirmed and cancel confirmed bookings. Whilst the Company always endeavours to avoid changes and cancellations, the Company must reserve the right to do so.
- 7.2** Most changes are minor, for example, a change in the timing of the Client's confirmed activities; a change in the venue at which any activity the Client has booked is to take place (where the activity itself has not changed); a change of accommodation to accommodation of the same or higher standard within the same destination city/town. If the Company has to make a significant change or cancel, the Company will tell the Client as soon as possible. Whilst the Company always endeavours to avoid changes and cancellations, the Company must reserve the right to do so. If there is time to do so before the start date of the Arrangements, the Company will offer the Client the choice of the following options:
- (a)** accept the changed arrangements; or
  - (b)** purchase alternative arrangements from the Company, of a similar standard to those originally booked if available. The Client must pay the applicable price of any such arrangements. This will mean paying more if it is more expensive or receiving a refund if it is cheaper; or
  - (c)** cancel or accept the cancellation, in which case the Client will receive a full refund of all monies the Client has paid to the Company.
- 7.3** Please note the above options are not available where any change made is a minor one. Except as otherwise expressly set out in these Conditions, the Company's liability for significant changes and cancellations is limited to the above mentioned options.
- 7.4** Very rarely, after the Arrangements have commenced, the Company or the Company's suppliers may be forced by Force Majeure to change or cancel part or all of the Arrangements. If this does happen then the Company regrets that the Company will be unable to provide any refunds, pay the Client any compensation or meet any losses or expenses the Client or any Guest(s) incur as a result. The Company will try to assist the Client to secure alternative arrangements but the Client will have to pay any associated and/or additional costs in doing so and arising out of the alternative arrangements.

## **8 Weather Conditions**

- 8.1** As the Client will appreciate, the Company has no control over the weather. The provision of favourable weather to allow the Client to take part in the Client's chosen activities does not form part of the Company's contractual obligations to the Client. There is always unfortunately the risk that the Client may be unable to take part in weather dependent activities due to poor weather. If this occurs, the Client will not be entitled to change or cancel the Client's arrangements without paying the Company's normal charges. The Client will not be entitled to the options and/or compensation set out in clause 7 above. The Company will assist the Client to find alternative activities or arrangements but it must be borne in mind that these may only be available at an additional charge to the Client.

## **9 Changes and Cancellations by the Client**

- 9.1** If the Client wishes to change the Client's booking in any way, the Company will try to comply with the Client's requests but the Company cannot guarantee that changes can always be made. Where a change can be made, the Client will be charged for any extra costs incurred by the Company and any costs or charges incurred or imposed by any of the Company's suppliers. The Company also reserves the right to charge an amendment fee.

- 9.2** Where the price of the Arrangements depends on the number of Guests booked and extra Guests are added to the booking, the price will be revised on the basis of the new number of Guests attending. The Client will be required to pay the increased price.
- 9.3** If the Client wishes to cancel all or any part of the Client's booking, the Client must advise the Company immediately by telephone followed by confirmation in writing. The Company will make a cancellation charge on the scale shown below. Charges are based on the estimated losses and expenses the Company may incur should the Company be unable to withdraw from the Company's obligations with the Company's suppliers

<b>Number of days before the date the Arrangements commence that the Company is notified of cancellation</b>	<b>Amount the Client must pay</b>
Over 3 months	50% of the total cost of the Arrangements in question or the minimum number price for the booking whichever is the greater
60- 90 days	75% of the total cost of the Arrangements in question
28-60 days	90% of the total cost of the Arrangements in question
0 -28 days	100% of the total cost of the Arrangements in question

The "total cost of the Arrangements" in the table above does not include any insurance premiums paid to the Company or amendment charges. Insurance premiums and amendment charges are not refundable in the event of cancellation. If the Client's/the Guest(s) insurance policy covers the reason for the Client's/the Guest(s) cancellation, the Client/the Guest(s) should be able to claim for a refund of the cancellation charges from the insurance company less any applicable excess.

- 9.4** Where any change to or cancellation of the booking reduces the number of full paying Guests below the number on which the price, number of free places and/ or any concessions agreed for the Client's booking were based, the Company will recalculate these items and re-invoice the Client accordingly. Please note, however, the minimum number price must be paid for all bookings as detailed in clause 5, even if the cost for the number of Guests on the booking would otherwise total less than the minimum price.

## **10 Force Majeure**

- 10.1** Except where otherwise expressly stated in these Conditions, the Company regrets that the Company cannot accept liability or pay any compensation where the performance or prompt performance of the Company's obligations under the Contract is prevented or affected by Force Majeure. Additionally the Company cannot accept liability or pay any compensation where the Client/any Guest(s) suffer any damage, injury, expense or loss of any description as a result of Force Majeure.

## **11 The Company's Liability**

- 11.1** The service the Company provides to the Client is to source and book the Arrangements for the Client. The Company will use reasonable skill and care in selecting the supplier(s) who will provide the Arrangements. The Company has no responsibility for the provision of the actual Arrangements themselves or for the acts or omissions of the supplier(s) concerned or any of its employees, agents, suppliers or subcontractors. It is the Client's responsibility to show that reasonable skill and care has not been used by the Company if the Client wishes to make a claim against the Company.
- 11.2** The Company does not exclude any liability for death or personal injury arising as a result of the Company's negligence.
- 11.3** Clauses 11.4 – 11.8 below are all subject to and without prejudice to clauses 11.1 and 11.2 above.
- 11.4** The Company shall not be responsible for any injury, illness, death, loss (for example loss of enjoyment), damage, expense, cost or other sum or claim of any description whatsoever which results from any of the following:
- (a)** the act(s) and/or omission(s) of any Guest(s) affected, or any other Guest(s); or
  - (b)** the act(s) and/or omission(s) of a third party not connected with the provision of the Arrangements and which were unforeseeable or unavoidable; or
  - (c)** Force Majeure.
- 11.5** The Company does not accept responsibility for any services which do not form part of the Arrangements. This includes, for example, any additional services or facilities which the Client's hotel or any other supplier agrees to provide for the Client/the Guest(s) that the Company has not booked for the Client/the Guest(s) and any excursion the Client/the Guest(s) purchase during their stay. In addition, regardless of any wording used by the Company on the Company's website, in any of the Company's quotes or elsewhere, the Company only promises to use reasonable skill and care as set out above and the Company shall have no greater or different liability to the Client.
- 11.6** The Company limits the maximum amount the Company may have to pay the Client for any claims the Client may make against the Company. For all claims which do not involve death or personal injury resulting from the Company's negligence, if the Company is found liable to the Client on any basis, the maximum amount the Company will have to pay the Client is the Contract price (excluding insurance premiums and amendment charges) paid by the Client.
- 11.7** The Company does not accept any liability for any damage, loss, expense or other sum(s) of any description (a) which on the basis of the information given to the Company by the Client concerning the Client's booking prior to the Company's

accepting it, the Company could not have foreseen the Client/the Guest would suffer or incur if the Company breached the Contract or (b) which did not result from any breach of the Contract or other fault of the Company. Additionally, the Company cannot accept liability for any indirect or consequential losses, including but not limited to business losses or loss of profit.

- 11.8** Some of the activities and events that the Company may offer are by their nature inherently dangerous. By participating in these activities or events, the Client/the Guest(s) assume the inherent risks involved. The Company shall not be responsible for any injury or loss suffered by the Client/the Guest(s) other than as expressly set out in these Conditions.

## **12 Insurance**

**12.1** It is the Client's responsibility to ensure that all Guests have adequate and appropriate travel insurance which is suitable for their particular requirements and the Arrangements, including any hazardous activities. Many policies do not cover such activities so the Client/the Guests must check the small print before purchasing and if in doubt, check with the insurers that the Client/the Guests will be covered.

**12.2** Such insurance should cover the cost of cancellation by the Client and/or any Guest(s) and the cost of assistance in the event of illness or accident. The Company cannot be responsible for injury or loss suffered by the Client/any Guest(s) other than as expressly set out in these Conditions. For this reason, the Company requests that the Client/all Guest(s) be fully and adequately insured.

**12.3** The Client must also ensure that Guests' insurance covers participation in any hazardous activities which do not form part of the Arrangements.

## **13 Behaviour**

**13.1** The Company or the Company's supplier(s) may terminate the Arrangements if the Client's behaviour or that of any Guest(s) is likely in the reasonable opinion of the Company or any person in authority to cause distress, damage, danger or annoyance to other customers, other guests, employees, property or anyone else or if any Guest(s) is or appears to be unfit to travel or participate in the Arrangements. In this situation the Guest(s) concerned will not be able to complete the Arrangements and the Company will not be liable for any refund, compensation or any expenses or costs the Client/the Guest(s) concerned have to pay or incur. The Company cannot accept liability for the behaviour of others in the Client's accommodation or any persons taking part in any event or activity associated and/or in the same environment which forms part of the Arrangements or if any facilities or services are removed as a result of their actions.

**13.2** The Client understands and agrees that when the Client books Arrangements through the Company, the Client accepts responsibility for the proper conduct of the Client and all Guests during the Arrangements. The Company or the Company's supplier(s) may terminate the Arrangements due to misconduct of the Client or any Guest(s). Full payment for any damage or loss caused by the Client or any Guest(s) must be made to the Company or the Company's supplier(s) as soon as possible.

**13.3** The Client will also be responsible for meeting any claims subsequently made against the Company or any of the Company's suppliers and for all costs incurred by the Company and/or the Company's supplier(s) (including the Company's own, the Company's supplier(s) and any other party's full legal costs) as a result of the Client's/any Guest(s)' actions.

**13.4** The Client agrees to ensure that all Guests comply with all event timetables. Failure to keep to the timetables may result in either discontinuation of the event or cancellation of the said event. The Company will not be liable for any refund, compensation or any costs that may be incurred by the Client/any Guest(s) as a result.

**13.5** The Client agrees to ensure that all Guest(s) act at all times in a safe and responsible manner and comply with all safety procedures, listen and be present at all safety and information briefings which are relevant to the Arrangements, make the Company's supplier(s) immediately aware of any equipment or site deficiencies or concerns, dress suitably for any event as advised by the Company's supplier(s) and observe and obey all laws, requests and conditions of use of any of the Company's supplier(s).

**13.6** Some events and activities require a high level of concentration and the use of alcohol or drugs or being under the influence of alcohol or drugs whilst participating in such events is strictly forbidden. If any Guest(s) have been using drink or drugs or fail to act in a safe and responsible manner, the Company's supplier(s) may cancel the Guest(s) participation forthwith. In this event, the Company will not be liable to pay the Client/the Guest(s) concerned any refund, or compensation or any costs or expenses incurred by the Client/the Guest(s).

## **14 Confidentiality and Intellectual Property Rights**

**14.1** All proposals and quotations the Company sends to the Client contain Confidential Information. The Client shall hold all Confidential Information in complete confidence and shall not use, disclose or permit the use or disclosure of any part of the Confidential Information except as agreed with the Company. The Client shall take all reasonable security precautions, being at least as great as the precautions it takes to protect its own confidential information, to keep confidential and ensure that all persons to whom any Confidential Information is disclosed also keep the information confidential. Should it be brought to the Company's attention that the Client has disclosed or used any of the Confidential Information other than as agreed with the Company, the Company will hold the Client liable for breach of confidentiality and will pursue the Client for any and all losses suffered by the Company as a result.

**14.2** The Client acknowledges the Company's ownership of any Intellectual Property Rights in any Services provided to the Client pursuant to the Contract and agrees not to contest the Company's ownership or use of any such Intellectual Property Rights. Without limitation, the Client shall not acquire any such Intellectual Property Rights or any licence or

grant of rights therein, nor shall the Client register or attempt or permit to be registered, any such Intellectual Property Rights or any licence or grant of rights therein. The Client further acknowledges that, without limitation, any and all Intellectual Property Rights developed by the Company in performing any Services shall become vested and shall vest in the Company absolutely and shall also be subject to the other provisions of this clause 14.2.

**14.3** All obligations created by this clause 14 shall survive and remain in full force and effect notwithstanding any change or termination of the Contract for any reason.

## **15 Health**

**15.1** Some of the events or activities the Client may book may require a suitable level of fitness, strength and endurance. It is the Client's responsibility to ensure that all Guests meet any applicable standards. Many events are not recommended for those with any disability, illness or infirmity. If any Guests have an existing medical condition or disability which may affect the Arrangements, the Client must let the Company know the details of such condition before the Client makes the Client's booking. If in the Company's reasonable opinion the Company believes that the Arrangements are not suitable for the Guest(s) concerned, taking into account the Guest(s) medical condition or disability, or the Guest(s) are not being accompanied by someone who could provide all necessary assistance that the Guest(s) may require, the Company can refuse to accept the booking. If the Company discovers after the Client has made the booking that a Guest(s) has an existing medical problem or disability and is not being accompanied by someone who could provide all necessary assistance that the Guest(s) may require and the Client has failed to give the Company this information at the time of booking, the Company reserves the right to cancel the booking and impose the cancellation charges as set out in clause 9.

## **16 Complaints Procedure**

**16.1** Should the Client/any Guest(s) be unhappy with any aspect of the Arrangements, the Client must immediately notify the supplier of the Arrangements concerned. If the problem still cannot be resolved, the Client must contact the Company as soon as possible. If the Client/the Guest(s) continue to be dissatisfied at the conclusion of the Arrangements, the Client must write to the Company formally setting out the Client's/ the Guest(s) points within 14 days of the end of the Arrangements if the Client's/ the Guest(s) complaint does not involve death or personal injury or illness, or within 3 months of the end of the Arrangements if the Client's/ the Guest(s) complaint involves death, personal injury or illness.

**16.2** As long as the above conditions have been observed, the matter will be investigated and a reply will be sent to the Client within 30 days of the receipt of the complaint. As it is difficult and sometimes impossible to properly investigate a complaint if the Company is not told about it reasonably quickly, any compensation the Client may have been able to claim could be reduced or even lost altogether if the Client does not follow the complaints procedure set out in this clause. Any acceptance of liability by the Company is however subject to clause 11. In the unlikely event that the Client/the Guest(s) have to pay for an activity or for entrance to a venue booked through the Company where the Client had already paid the Company for this activity then the Client/the Guest(s) must collect a receipt and send it to the Company in order for the Company to reimburse those costs.

## **17 Terms and Conditions of Suppliers**

**17.1** Many of the services which comprise the Client's booking are provided by independent suppliers. Those suppliers provide those services in accordance with their own terms and conditions. Some of these terms and conditions may limit or exclude the supplier's liability to the Client. Copies of the relevant parts of these terms and conditions should be available on request from the supplier concerned.

## **18 Delivery**

**18.1** Whilst the Company will reasonably endeavour to deliver the Goods in accordance with the Client's requirements, the Company will not be liable for any consequences of any delay in the delivery of the Goods, howsoever caused.

**18.2** Unless otherwise agreed in writing by the Company, the Company's obligation to deliver the Goods shall be deemed fulfilled upon delivery ex-works, the Company's premises. The Client shall be responsible for arranging for the carriage of the Goods to the destination address. The cost of packaging together with all transportation and carriage costs (including, without limitation, the cost of all related insurance coverage and the cost of loading and unloading the Goods) shall be borne by the Client.

**18.3** The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

**18.4** Each instalment shall be a separate contract.

**18.5** No cancellation or termination of any one contract relating to an instalment shall entitle the Client to repudiate or cancel any other contract or instalment.

**18.6** All deliveries must be signed for by an individual who is at least 18 years of age. If for any reason the Client fails to take or accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Client has not provided appropriate instructions, documents, licences or authorisations, the Company will charge the Client an abortive delivery charge and:

- (a)** risk in the Goods shall pass to the Client (including for loss or damage caused by the Company's negligence);
- (b)** the Goods shall be deemed to have been delivered; and
- (c)** the Company may store the Goods until delivery, whereupon the Client shall be liable for all related costs and expenses (including, without limitation, storage and insurance); or
- (d)** sell the Goods at the best price readily obtainable and (after deducting any reasonable costs and expenses in connection

- with the storage and expedited sale of the Goods), charge the Client for any shortfall below the price for the Goods.
- 18.7** Where the Goods are to be installed by the Company, all installation charges shall be payable to the Company by the Client and the Company reserves the right to undertake a pre-installation site inspection, although the Company shall not be obliged to do so. Where any Goods are to be so installed, the Client shall:
- (a) provide prompt and unobstructed access to and egress from the site;
  - (b) provide the Company with all information, co-operation and support and access to all facilities, resources and utilities at the site that may be required to enable the Company to carry out its obligations to the Client; and
  - (c) effect and maintain appropriate insurance at the site on an all risks basis and in an adequate amount.

## **19 Obligations of the Client regarding Hire Goods**

- 19.1** Where the Company agrees to supply Hire Goods, the Client agrees that it shall:
- (a) take reasonable care of the Hire Goods and use them only for their intended and proper purpose in a safe and correct manner;
  - (b) comply with all directions given by the Company or in any accompanying instructions as to the use and where applicable, operation, installation, and/or removal of the Hire Goods and the Client shall be liable for any damage or deterioration (fair wear and tear excepted) resulting from any failure so to comply;
  - (c) take adequate and proper measures to protect the Hire Goods from damage and other risks;
  - (d) insure the Hire Goods on such terms as the Company may require, the proceeds of such insurance to be held by the Client in trust for the Company and to be paid to the Company on demand;
  - (e) permit the Company at all reasonable times and upon reasonable notice to inspect, repair or replace the Hire Goods;
  - (f) notify the Company immediately, following any loss of, theft of, damage or deterioration to, and/or breakdown of, the Hire Goods; and
  - (g) protect the Hire Goods against distress, execution or seizure and keep the Hire Goods at all times under its control;
  - (h) where the Hire Goods are to be operated, installed and/or removed by the Client, ensure that any employees, agents or contractors that operate, install, and/or remove the Hire Goods are adequately and sufficiently qualified and trained to do so;
  - (i) be responsible for and shall fully reimburse the Company for any and all expenses, costs, losses (including loss of Hire Charges) and/or damage incurred by or against the Company arising from any loss of, theft of, damage or deterioration to, and/or breakdown of the Hire Goods; and
  - (j) indemnify and keep indemnified the Company against any and all losses, lost profits, damages, claims, costs, actions and any other losses and/or liabilities suffered by the Company and arising from or due to any breach of contract, tortious act and/or omission and/or any breach of statutory duty by the Client.
- 19.2** The Client hereby agrees that with respect to any Hire Goods, it shall not:
- (a) attempt to repair, alter or interfere with the Hire Goods without the prior written consent of the Company (other than undertaking routine maintenance to the Hire Goods, for which the Client shall be responsible);
  - (b) use, nor continue to use any Hire Goods in an unsafe or unsatisfactory state or environment, or where they have been damaged and will notify the Company immediately if the Hire Goods are involved in an accident resulting in damage to the Hire Goods, other property and/or injury to any person;
  - (c) remove from, nor cover up, alter or deface any labels, names or proprietary marks on the Hire Goods;
  - (d) affix any marking, or labelling on the Hire Goods without the Company's written consent;
  - (e) attempt to sell, hire, assign, charge, pledge, or otherwise lend or dispose of the Hire Goods or any interest therein;
  - (f) remove the Hire Goods from the Client's premises, or from any premises where the Client has agreed to deploy the Hire Goods, without the authority of the Company; or
  - (g) without limitation, do or omit to do anything which the Client has been notified may invalidate any policy of insurance related to the Hire Goods.
- 19.3** Ownership of the Hire Goods shall remain at all times with the Company. Risk of damage to or loss of the Hire Goods shall pass to the Client:
- (a) in the case of Hire Goods to be delivered at the Company's place of business, at the time when the Company notifies the Client that the Hire Goods are available for collection; or
  - (b) in the case of Hire Goods to be delivered other than at the Company's place of business, at the time of delivery of the Hire Goods to the Client's premises, or to such other location as shall be notified by the Client to the Company in advance of despatch of the Hire Goods.
- 19.4** Risk of damage to or loss of the Hire Goods shall pass back from the Client to the Company:
- (a) in the case of Hire Goods to be collected by the Company, on delivery to the Company's carrier at the Client's premises or such other location as shall be notified by the Client to the Company and approved by the Company; or
  - (b) in the case of Hire Goods to be returned to the Company's place of business by the Client, at the time of delivery to the Company's place of business.
- 19.5** The Company shall be entitled to vary the Hire Charge from time to time by giving not less than 24 hours' written notice to the Client.
- 19.6** An additional Hire Charge shall be payable if the Company and the Client agree to extend the Hire Term beyond the Termination Date. In any event, any retention of the Hire Goods beyond the Termination Date by or on behalf of the Client shall require the Client to continue to pay the Hire Charge on a day-rate basis for the entire duration of the period for which the Hire Goods are so retained, without limiting any other right or remedy available to the Company in such circumstances.

- 19.7** Unless the Client has been notified by the Company that the Client shall return the Hire Goods to the Company's place of business on the Termination Date, the Client shall be responsible for making the Hire Goods available for collection by the Company on the Termination Date and the Client shall pay to the Company in addition to the Hire Charge the cost of such collection at the Company's standard rates applicable from time to time. For the avoidance of doubt, the Hire Charge shall be payable from the time that the Hire Goods leave the Company's place of business and shall remain payable (i) until the Hire Goods have been returned to the Company's place of business where the Client has been notified by the Company that the Hire Goods shall be so returned, or otherwise (ii) until the Client has made the Hire Goods available for collection by the Company.
- 19.8** The Hire Goods must be submitted to the Company in good order and condition (fair wear and tear excepted) and in a clean condition. The Client shall ensure that the Hire Goods are re-packed into the cases in which they were originally delivered.
- 19.9** If the Hire Goods are found by the Company to be in a damaged, unclean and/or defective state except where due to fair wear and tear, the Client shall be liable to pay the Company for the cost of any repair and/or cleaning required to return the Hire Goods to a condition fit for re-hire and to continue to pay the Hire Charge on a day-rate basis until such repairs and/or cleaning have been completed.
- 19.10** The Client will incur additional costs and charges for any Hire Goods which are damaged beyond economic repair, up to and including the replacement cost of new Hire Goods at current market rates.
- 19.11** Without limiting any of the provisions of clause 19.10, the Client shall pay the Hire Charge for the Hire Goods up to and including the date it notifies the Company that the Hire Goods have been damaged beyond economic repair. From that date until the Company has replaced such Hire Goods the Client shall pay, as a genuine pre-estimate of lost profit, a sum as liquidated damages being equal to two thirds of the Hire Charge that would have applied for such Hire Goods for that period. The Company shall use its reasonable commercial endeavours to purchase replacements for such Hire Goods as quickly as possible.
- 19.12** If the Client wishes to cancel all or any part of the Client's order for Hire Goods, the Client must advise the Company immediately by telephone followed by confirmation in writing. The Company will make a cancellation charge on the scale shown below. Charges are based on the estimated losses and expenses the Company may incur as a result of cancellation.

<b>Number of days before the Commencement date that the Company is notified of cancellation</b>	<b>Amount the Client must pay</b>
Over 3 months	50% of the Hire Charge
60- 90 days	75% of the Hire Charge
28-60 days	90% of the Hire Charge
0 -28 days	100% of the Hire Charge

## **20 Risk and Title for Goods sold to the Client**

- 20.1** Risk of damage to or loss of the Goods shall pass to the Client:
- (a)** in the case of Goods to be delivered at the Company's place of business, at the time when the Company notifies the Client that the Goods are available for collection; or
  - (b)** in the case of Goods to be delivered other than at the Company's place of business, at the time of delivery of the Goods to the Client's premises, or such other location as shall be notified by the Client to the Company in advance of despatch of the Goods.
- 20.2** Title to the Goods shall not pass to the Client until the Company has received payment in full (including any interest or other sums payable) in cash or cleared funds (i) for the Goods and (ii) for any other goods or services that the Company has supplied to the Client in respect of which payment has become due.
- 20.3** Until title to the Goods has passed to the Client, the Client shall:
- (a)** hold the Goods on a fiduciary basis as the Company's bailee;
  - (b)** store the Goods separately from all other goods held by the Client so that they remain readily identifiable as the Company's property;
  - (c)** not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (d)** maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery and indemnify the Company against all loss or damage of whatsoever nature affecting the Goods;
  - (e)** notify the Company immediately if it becomes subject to any of the events listed in clause 20.4;
  - (f)** not assign to any other person any rights arising from a sale of the Goods without the Company's written consent (and then only subject to a set of terms and conditions containing a Risk and Title Condition which is at least as onerous as this clause 20); and
  - (g)** give the Company such information relating to the Goods as the Company may require from time to time, but the Client may use or resell the Goods in the ordinary course of its business, provided always that (unless expressly agreed otherwise in writing by the Company) nothing herein shall constitute the Client the agent of the Company for the purpose of any such resale of the Goods.

- 20.4** The Client's right to possession of the Goods shall terminate immediately if:
- (a)** the Client has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Client, or notice of intention to appoint an administrator is given by the Client or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Client or for the granting of an administration order in respect of the Client, or any proceedings are commenced relating to the insolvency or possible insolvency of the Client; or
  - (b)** the Client suffers or allows any execution distress or diligence, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Client, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or a secured lender to the Client takes any steps to obtain possession of the secured property or otherwise enforce its security, or the Client ceases or threatens to cease to trade.
- 20.5** If:
- (a)** the Client is late in paying for the Goods; or
  - (b)** the Client is late in paying for any other goods or services supplied by the Company; or if
  - (c)** before title to the Goods passes to the Client, the Client becomes subject to any of the events listed in clause 20.4 or the Company reasonably believes that any such event is about to happen and notifies the Client accordingly, then provided that the Goods have not been irrevocably incorporated into another product and without limiting any other right or remedy the Company may have, the Company may at any time require the Client to deliver up the Goods and, if the Client fails to do so promptly, the Company may enter any premises of the Client or of any third party where the Goods are stored or kept in order to recover them. The Client shall not keep the Goods at any premises other than such premises as shall be specified in writing by the Client to the Company prior to the dispatch of Goods to the Client, or at any premises at which the Client does not have the right to grant access to the Company.
- 20.6** 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.
- 20.7** On termination of the Contract, howsoever caused, the Company's (but not the Client's) rights contained in this clause 20 shall remain in effect.

## **21 Force Majeure**

- 21.1** The Company reserves the right to defer the date of supply of the Goods, or to cancel the Contract or reduce the quantity of the Goods ordered by the Client (without liability to the Client) if the Company becomes subject to an event of Force Majeure.

## **22 Warranties**

- 22.1** The Company will endeavour to transfer to the Client the benefit of any manufacturer's warranty or guarantee given to the Company and the Company warrants (subject to the other provisions of these Conditions) that:
- (a)** on delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - (b)** if the Client has made it expressly known to the Company in the Client's order that the Goods shall be suitable for a particular purpose and the Company has expressly stated in its written acceptance of the Client's order that it will supply Goods suitable for that purpose, then the Goods shall be reasonably fit for the purpose so stated.
- 22.2** The Company's liability pursuant to clause 22.1 shall be limited to the replacement of any part of the Goods found to be defective and notified to the Company within the period set forth in clause 22.3 (or, if the claim is on any manufacturer's warranty, within the relevant manufacturer's warranty period).
- 22.3** Any defect in the Goods shall be notified to the Company within 72 hours of the time when the Client discovers or ought to have discovered the defect; otherwise, the Goods shall be deemed to be satisfactory and a charge will be made for additional rectification work.
- 22.4** The Company shall not be liable for any breach of any warranty in clause 22.1, if:
- (a)** the Client makes any further use of any Goods which the Client has alleged to be defective after giving notice of any such defect;
  - (b)** the Client modifies, adjusts, alters or repairs the Goods without the prior written consent of the Company;
  - (c)** the defect arises because the Client failed to follow any oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - (d)** the defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse of the Goods or from any other cause which is not due to the neglect or default of the Company;
  - (e)** the Client is in breach of any of its obligations in clause 19, with respect to any Hire Goods; or
  - (f)** the defect is of a type specifically excluded by the Company by notice in writing.
- 22.5** If upon investigation, the Company reasonably determines that any defect in the Goods is a result of, or is excused by, any of the matters referred to in clause 22.4, the Client shall be liable for all costs reasonably incurred by the Company in investigating the same and determining the cause.

## 23 Limitation of Liability

- 23.1** The following provisions set out the entire financial liability of the Company to the Client in respect of any use made or resale by the Client of any of the Goods, or of any product incorporating any of the Goods.
- 23.2** All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 23.3** Nothing shall exclude or limit the liability of the Company:
- (a)** for death or personal injury caused by the Company's negligence; or
  - (b)** under section 2(3), Consumer Protection Act 1987; or
  - (c)** for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.
- 23.4** Subject to clause 23.2 and clause 23.3:
- (a)** the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
  - (b)** the Company shall not be liable to the Client for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 24 Termination

- 24.1** Either party shall be entitled to immediately terminate the Contract on giving written notice to the other if:
- (a)** the other party commits any material breach of any of these Conditions and in the case of such a breach which is capable of remedy, fails to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied (for the avoidance of doubt any late payment or failure to pay by the Client any sums due shall be a material breach); or
  - (b)** any one or more of the events set forth in clause 8.4 occurs in relation to the other party.
- 24.2** Termination of the Contract shall be without prejudice to any accrued rights and remedies of either party.
- 24.3** On the Termination Date, or following termination of the Contract for whatever reason, the Client shall forthwith ensure that the Hire Goods are returned to the Company's place of business, subject to the provisions of clause 19.7.
- 24.4** If the Client fails to return the Hire Goods on any date required under clause 24.3, the Company may, without notice, retake possession of the Hire Goods and for this purpose shall be entitled without notice, to enter into any premises occupied, controlled or used by the Client.

## 25 Indemnity

- 25.1** The Client shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made by or against the Company in respect of any liability, loss, damage, injury, cost or expense whatsoever, howsoever and to whomsoever occurring, to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Client in writing.

## 26 Miscellaneous Provisions

- 26.1** No forbearance or indulgence granted by the Company to the Client shall in any way limit the rights of the Company under these Conditions of Supply.
- 26.2** 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 principal place of business.
- 26.3** Neither the Company nor the Client intends that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 26.4** 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.
- 26.5** The Company, but not the Client, shall be free to sub-contract or delegate to any third party any or all of its obligations under the Contract without seeking the prior consent of the other party.
- 26.6** The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings between the parties.
- 26.7** Any dispute arising under or in connection with the Contract shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application by either party to the President for the time being of the Law Society whose decision as to the type, qualifications and experience of such arbitrator shall be final and binding on the parties. The costs of the arbitrator shall be borne by the parties as he directs and his decision on the issue in dispute shall be final.
- 26.8** The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English & Welsh law and the parties submit to the exclusive jurisdiction of the English & Welsh courts.