



BUK LIMITED
TERMS &
CONDITIONS
OF SALE

'Tomorrow's furniture, Available today'

August 2017

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Affiliate	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
Bribery Laws	means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;
Conditions	means the Supplier's terms and conditions of sale set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to the Goods, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means the agreement between the Supplier and the Customer for the sale and purchase of Goods incorporating these Conditions and the Order Acknowledgement;
Control	has the meaning given to it in section 1124 of the Corporation Tax Act 2010;
Customer	means the person who purchases the Goods from the Supplier and whose details are set out in the Order Acknowledgement;
Force Majeure	means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including but not limited to an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving the Supplier's or its suppliers workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;
Goods	means the goods and related accessories, spare parts and documentation and other physical material set out in the Order Acknowledgement and to be supplied by the Supplier to the Customer;
Intellectual Property Rights	means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: <ul style="list-style-type: none">(a) whether registered or not(b) including any applications to protect or register such rights(c) including all renewals and extensions of such rights or applications(d) whether vested, contingent or future(e) to which the relevant party is or may be entitled, and(f) in whichever part of the world existing;
Location	means the address for delivery of the Goods as set out in the Order Acknowledgement;
Modern Slavery Policy	means the Supplier's anti-slavery and human trafficking policy in force and notified to the Customer in accordance with Clause 11;
Order Acknowledgement	means the order acknowledgement sent from the Supplier to the Customer detailing the offer to sell Goods to the Customer (and which for the avoidance of doubt may not include all Goods set out in the Order Enquiry);
Order Enquiry	means any initial indication received from the Customer that it wishes to purchase Goods from the Supplier;
Price	has the meaning given in clause 3.1;
Specification	means the description or specification of the Goods and their packaging set out or referred to in the Order Acknowledgement;
Supplier	means BUK Ltd, Company number 01269080, Head Office: Symonds Farm Business Park, Newmarket Road, Risby, Bury St Edmunds, Suffolk, IP28 6RE, VAT No. 907878379;
VAT	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.

- 1.2 In these Conditions, unless the context requires otherwise:
- 1.2.1 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
 - 1.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
 - 1.2.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
 - 1.2.4 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
 - 1.2.5 a reference to a gender includes all other genders;
 - 1.2.6 words in the singular include the plural and vice versa;
 - 1.2.7 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
 - 1.2.8 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
 - 1.2.9 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time; and
 - 1.2.10 a reference to legislation includes all subordinate legislation made from time to time under that legislation.

2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's Order Enquiry, purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in the Order Acknowledgement.
- 2.3 No variation of these Conditions or to an Order Acknowledgement or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Supplier.
- 2.4 Order Enquiries are invitations to treat only. They are not an offer to purchase Goods capable of being accepted by the Supplier.
- 2.5 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Goods and are incapable of being accepted by the Customer.
- 2.6 On receipt of an Order Enquiry from the Customer, the Supplier may issue an Order Acknowledgement to the Customer. Each Order Acknowledgement shall be an offer to sell Goods subject to these Conditions.
- 2.7 An Order Acknowledgement may be withdrawn or amended by the Supplier at any time before acceptance by the Customer. If the Customer is unable to accept an Order Acknowledgement, it shall notify the Supplier as soon as reasonably practicable.
- 2.8 Subject to Clause 2.7, the offer constituted by an Order Acknowledgement shall remain in effect and capable of being accepted by the Customer for 5 Business Days from the date on which the Supplier submitted the Order Acknowledgement, after which time it shall automatically lapse and be withdrawn.
- 2.9 An Order Acknowledgement shall be deemed accepted, when
 - 2.9.1 the Customer submits confirmation of the Order Acknowledgement
 - 2.9.2 the Customer accepts delivery of the Goods or the Customer does anything consistent with its intention to accept delivery of the Goods (as the case may be)whichever is earlier, at which point the Contract shall come into existence.
- 2.10 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.

3 Price

- 3.1 The price for the Goods shall be as set out in the Order Acknowledgement or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges in force from time to time before the date of the Order Acknowledgement (**Price**).
- 3.2 The Prices are exclusive of:
 - 3.2.1 packaging, delivery, and insurance which shall be charged in addition at the Supplier's standard rates, and
 - 3.2.2 VAT (or equivalent sales tax).
- 3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.4 The Supplier may increase any Prices at any time by giving the Customer not less than 15 Business Days' notice in writing provided that the increase does not exceed 10% of the Prices in effect immediately prior to the increase.
- 3.5 Notwithstanding clause 3.4, the Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Goods which exceeds 10% and which is due to any factor beyond the control of the Supplier.

4 Payment

- 4.1 The Supplier shall invoice the Customer for the Goods at any time after dispatch from the Supplier's premises.
- 4.2 The Customer shall pay all invoices:
 - 4.2.1 in full without deduction or set-off, in cleared funds within 28 days of the date of each invoice;

- 4.2.2 to the bank account nominated by the Supplier; and
 - 4.2.3 in accordance with the terms agreed on their trade account following acceptance of their completed trade application form
- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
- 4.3.1 the Supplier may, without limiting its other rights, charge interest on such sums at 4 % a year above the base rate of the Bank of England from time to time in force, and
 - 4.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

5 Credit limit

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit or do not comply with their payment terms.

6 Delivery

- 6.1 An Order Acknowledgement shall specify whether the Goods are to be:
- 6.1.1 delivered by the Supplier, or by a carrier appointed by the Supplier, to the Location on the date(s) specified in the Order Acknowledgement; or
 - 6.1.2 made available for collection by the Customer at the Supplier's, or carrier's, premises set out in the Order Acknowledgement (as the case may be). The Customer shall collect the Goods within the period specified in the Order Acknowledgement.
- 6.2 The Goods shall be deemed delivered:
- 6.2.1 if delivered by the Supplier under clause 6.1.1, on arrival of the Goods at the Location; or
 - 6.2.2 if delivered by a carrier under clause 6.1.1, on delivery of the Goods by the Supplier to the carrier; or
 - 6.2.3 if collected by the Customer under clause 6.1.2, when the Supplier makes the Goods available for collection at the Supplier's, or carrier's, premises (as the case may be).
- 6.3 The Customer shall not be entitled to reject any delivery of Goods on the basis that an incorrect volume of Goods has been supplied provided the volumes are within the tolerances (if any) set out in the Order Acknowledgement.
- 6.4 The Goods may be delivered by instalments if specified in the Order Acknowledgement. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.5 Delivery of the Goods shall be accompanied by a delivery note stating:
- 6.5.1 the date of confirmation of the Order Acknowledgement;
 - 6.5.2 the product numbers, type and quantity of Goods in the consignment; and
 - 6.5.3 any special handling instructions.
- 6.6 Time of delivery is not of the essence. The Supplier shall use its reasonable endeavours to meet delivery dates but such dates are approximate only.
- 6.7 Unless the parties agree otherwise, packaging material is to be disposed of by the Customer in a manner as environmentally friendly as possible.
- 6.8 The Supplier shall not be liable for any delay in or failure of delivery caused by:
- 6.8.1 the Customer's failure to: (i) make the Location available, (ii) prepare the Location as required for delivery and, if applicable, installation of the Goods or (iii) provide the Supplier with adequate instructions for delivery and, if applicable, installation or otherwise relating to the Goods;
 - 6.8.2 the Customer's failure to collect the Goods from the Supplier's premises; or
 - 6.8.3 Force Majeure.
- 6.9 If the Customer fails to accept delivery of the Goods, the Goods shall be deemed to have been Delivered, the Supplier shall store and insure the Goods pending actual delivery, and the Customer shall pay all costs and expenses incurred by the Supplier in doing so.
- 6.10 If 15 Business Days following the due date for delivery or collection of the Goods, the Customer has not taken delivery of or collected them, the Supplier may resell or otherwise dispose of the Goods. The Supplier shall after deducting reasonable storage charges and costs of resale invoice the Customer for any shortfall below the Price of the Goods.
- 6.11 Reservations Policy
- Reservations may be placed for any goods, within your individual accounts credit terms for a maximum of 5 Business Days and cannot be repeated for an additional 20 Business Days
- Reservations are subject to availability and acceptance at the time of the request, this does not constitute an order, and confirmation of the reservation by the Supplier shall not be treated as binding and is placed at the Supplier's discretion.
- 6.12 Returns Policy
- In addition to the rights set out in Clause 9, which applies if Goods do not conform to the warranties, the Supplier may accept the return of Goods where the Customer changes its mind for any reason, provided that:
- 6.12.1 the Customer clearly informs the Supplier of its wish to return the Goods no later than 48 hours following Delivery;
 - 6.12.2 the Customer obtains the prior consent of the Supplier to return the Goods and complies with any reasonable instructions of the Supplier relating to the return;
 - 6.12.3 the Customer completes and sends to the Supplier the Supplier's returns form;

- 6.12.4 the Goods are returned in their original packaging and in their original condition.
- 6.13 The Customer will bear the cost of returning the Goods although a contribution for the return cost may be made at the Supplier's absolute discretion and in addition the Customer shall pay a re-handling fee equivalent to 20% of the Price of the returned Goods.
- 6.14 The returned Goods will be inspected by the Supplier within 48 hours of receipt and confirmation sent to the Customer as to whether the return is accepted.
- 7 Risk**
- Risk in the Goods shall pass to the Customer on Delivery.
- 8 Title**
- 8.1 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.
- 8.2 Until title to the Goods has passed to the Customer, the Customer shall:
- 8.2.1 hold the Goods as bailee for the Supplier;
- 8.2.2 store the Goods separately from all other material in the Customer's possession;
- 8.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
- 8.2.4 insure the Goods from the date of Delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
- 8.2.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;
- 8.2.6 not remove or alter any mark on or packaging of the Goods;
- 8.2.7 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 17.1.1 to 17.1.4 or 17.2.1 to 17.2.11; and
- 8.2.8 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.
- 8.3 Notwithstanding clause 8.2, the Customer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 17.1.1 to 17.1.4 or 17.2.1 to 17.2.11 has occurred or is likely to occur.
- 8.4 If the Customer resells the Goods in accordance with clause 8.3, title to the Goods shall pass to the Customer immediately prior to the resale.
- 8.5 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 17.1.1 to 17.1.4 or 17.2.1 to 17.2.11, the Supplier may:
- 8.5.1 require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and
- 8.5.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.
- 9 Warranty**
- 9.1 The Supplier warrants that the Goods shall, for a period of 12 months from Delivery (the **Warranty Period**):
- 9.1.1 Subject to Clause 9.2 and 9.3, conform in all material respects to the Order Acknowledgement and product Specification;
- 9.1.2 be free from material defects in design, material and workmanship; and
- 9.1.3 be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 9.2 **The Supplier gives no warranty and makes no representation that the Goods are fit for any particular purpose or need of the Customer. It is the Customer's responsibility to ensure that the Goods ordered are suitable for any purpose for which they are required.**
- 9.3 **The Customer acknowledges and agrees that where Goods are made in whole or in part from a natural product, natural variations in appearance will occur. Any description of the appearance or sample of such Goods shown to or inspected by the Customer is solely for purposes of reference and does not constitute or afford the basis for any express or implied undertaking that the Goods correspond with or conform to such reference or constitute the Contract a sale by sample or a sale by description and is not and has not been relied on by the Customer when entering into the Contract.**
- 9.4 The Supplier shall, at its option, repair, replace, or refund the invoiced Price of, any Goods that do not comply with clause 9.1, provided that the Customer:
- 9.4.1 serves a written notice on Supplier:
- (a) in the case of defects discoverable by a physical inspection within 3 Business Days of delivery.
- (b) in the case of latent defects appearing within the Warranty Period, within *one* month from the date on which Customer became aware (or should reasonably have become aware) of the defect;
- 9.4.2 provides the Supplier with sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;
- 9.4.3 gives the Supplier a reasonable opportunity to examine the defective Goods; and
- 9.4.4 returns the defective Goods to the Supplier at the Customer's expense.
- 9.5 The provisions of these Conditions, including the warranties set out in clause 9.1, shall apply to any Goods that are repaired or replaced with effect from Delivery of the repaired or replaced Goods.
- 9.6 The Supplier shall not be liable for any failure of the Goods to comply with clause 9.1:

- 9.6.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
 - 9.6.2 to the extent caused by the Customer's failure to comply with the Supplier's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
 - 9.6.3 to the extent caused by the Supplier following any specification or requirement of the Customer in relation to the Goods;
 - 9.6.4 where the Customer modifies any Goods without the Supplier's prior written consent or, having received such consent, not in accordance with the Supplier's instructions; or
 - 9.6.5 where the Customer uses any of the Goods after notifying the Supplier that they do not comply with clause 9.1.
- 9.7 Except as set out in this clause 9:
- 9.7.1 the Supplier gives no warranties and makes no representations in relation to the Goods; and
 - 9.7.2 shall have no liability for their failure to comply with the warranty in clause 9.1, and all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

10 Anti-bribery

- 10.1 For the purposes of this clause 10 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 10.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 10.2.1 all of that party's personnel;
 - 10.2.2 all others associated with that party; and
 - 10.2.3 all of that party's subcontractors; involved in performing the Contract so comply.
- 10.3 Without limitation to clause 10.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 10.4 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 10.

11 Anti-slavery

- 11.1 The Customer undertakes, warrants and represents that:
- 11.1.1 neither the Customer nor any of its officers, employees, agents or subcontractors has:
 - (a) committed an offence under the Modern Slavery Act 2015 (a **MSA Offence**); or
 - (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (c) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
 - 11.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;
 - 11.1.3 its responses to the Supplier's modern slavery and human trafficking due diligence questionnaire, are complete and accurate; and
 - 11.1.4 it shall notify the Supplier immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of Customer's obligations under clause 11.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Customer's obligations.
- 11.2 Any breach of clause 11.1 by the Customer shall be deemed a material breach of the Contract and shall entitle the Supplier to terminate the Contract with immediate effect.

12 Indemnity and insurance

- 12.1 The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses which the Supplier may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under the Contract.
- 12.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

13 Limitation of liability

- 13.1 The extent of the Supplier's liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 13.
- 13.2 Subject to clause 13.5, the Supplier's total liability shall not exceed the sum of 100% of the invoiced value of the Goods
- 13.3 Subject to clause 13.5, the Supplier shall not be liable for consequential, indirect or special losses.
- 13.4 Subject to clause 13.5, the Supplier shall not be liable for any of the following (whether direct or indirect):

- 13.4.1 loss of profit;
 - 13.4.2 loss of data;
 - 13.4.3 loss of use;
 - 13.4.4 loss of production;
 - 13.4.5 loss of contract;
 - 13.4.6 loss of opportunity;
 - 13.4.7 loss of savings, discount or rebate (whether actual or anticipated);
 - 13.4.8 harm to reputation or loss of goodwill.
- 13.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 13.5.1 death or personal injury caused by negligence;
 - 13.5.2 fraud or fraudulent misrepresentation;
 - 13.5.3 any other losses which cannot be excluded or limited by applicable law;
 - 13.5.4 any losses caused by wilful misconduct.
- 14 Intellectual Property**
- 14.1 Whilst the Supplier seeks to ensure that the sale of any Goods and their use and possession does not infringe the Intellectual Property Rights of any third party, the Supplier makes no representation or warranties regarding the ownership of Intellectual Property Rights or infringements in or relating to the Goods.
- 15 Confidentiality and announcements**
- 15.1 The Customer shall keep confidential all Confidential Information of the Supplier and of any Affiliate of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 15.1.1 any information which was in the public domain at the date of the Contract;
 - 15.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 15.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; or
 - 15.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 15.2 This clause 15 shall remain in force in perpetuity from the date of the Contract.
- 15.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 16 Force Majeure**
- 16.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- 16.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
 - 16.1.2 uses best endeavours to minimise the effects of that event.
- 16.2 If, due to Force Majeure, a party:
- 16.2.1 is or shall be unable to perform a material obligation; or
 - 16.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days or a total of more than 30 days in any consecutive period of 60 days;
- the other party may, within 30 days, terminate the Contract on immediate notice.
- 17 Termination**
- 17.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:
- 17.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;
 - 17.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
 - 17.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or
 - 17.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 17.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 17.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 17.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
 - 17.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

- 17.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 17.2.5 has a resolution passed for its winding up;
- 17.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 17.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within *seven* days of that procedure being commenced;
- 17.2.8 has a freezing order made against it;
- 17.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
- 17.2.10 is subject to any events or circumstances analogous to those in clauses 17.2.1 to 17.2.9 in any jurisdiction;
- 17.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 17.2.1 to 17.2.10 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 17.3 The Supplier may terminate the Contract any time by giving not less than 2 weeks notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 17.4 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 17, it shall immediately notify the Supplier in writing.
- 17.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.
- 18 Dispute resolution**
- 18.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 18.
- 18.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 18.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 18.3.1 Within *7 days* of service of the notice, the *contract managers* of the parties shall meet to discuss the dispute and attempt to resolve it.
- 18.3.2 If the dispute has not been resolved within *7 days* of the first meeting of the *contract managers*, then the matter shall be referred to the *chief executives* (or persons of equivalent seniority). The *chief executives* (or equivalent) shall meet within *7 days* to discuss the dispute and attempt to resolve it.
- 18.4 The specific format for the resolution of the dispute under clause 18.3.1 and, if necessary, clause 18.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 18.5 If the dispute has not been resolved within *14 days* of the first meeting of the *chief executives* (or equivalent) under clause 18.3.2 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 18.6 Either party may issue formal legal proceedings or commence arbitration at any time whether or not the steps referred to in clauses 18.3 and 18.5 have been completed.
- 19 Notices**
- 19.1 Any notice given by a party under these Conditions shall:
- 19.1.1 be in writing and in English;
- 19.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
- 19.1.3 be sent to the relevant party at the address set out in the Contract
- 19.2 Notices may be given, and are deemed received:
- 19.2.1 by hand: on receipt of a signature at the time of delivery;
- 19.2.2 by *Royal Mail Recorded Signed For* post: at 9.00 am on the *second* Business Day after posting;
- 19.2.3 by *Royal Mail International Tracked & Signed OR Royal Mail International Signed* post: at 9.00 am on the *fourth* Business Day after posting; and
- 19.2.4 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
- 19.2.5 by email: on receipt of a delivery or read receipt email from the correct address.
- 19.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 19.1 and shall be effective:
- 19.3.1 on the date specified in the notice as being the date of such change; or
- 19.3.2 if no date is so specified, 7 Business Days after the notice is deemed to be received.
- 19.4 This clause 19 does not apply to notices given in legal proceedings or arbitration.

20 Cumulative remedies

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

21 Time

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

22 Further assurance

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

23 Entire agreement

23.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

23.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

23.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

24 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and is duly signed or executed by, or on behalf of, the Supplier.

25 Assignment

25.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, which it may withhold or delay at its absolute discretion.

25.2 Notwithstanding clause 25.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Supplier prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.

26 Set off

26.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.

26.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

27 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

28 Equitable relief

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

29 Severance

29.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

29.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

30 Waiver

30.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

30.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

30.3 A waiver by the Supplier of any term, provision, condition or breach of the Contract shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.

31 Compliance with law

The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

32 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order Acknowledgement, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail.

33 Costs and expenses

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

34 Third party rights

34.1 Except as expressly provided for in clause 34.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

34.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

35 Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

36 Jurisdiction

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

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