

Ridgeway Plant Co Ltd Terms & Conditions of Sale for Trade Customers

The following sets out the general terms and conditions on which Ridgeway Plant Co Ltd trading as Ridgeway ('the Company') will supply building and construction products to trade customers ('the Customer') who have agreed to purchase them. These terms and conditions do not apply if you are a consumer. For the purposes of these terms and conditions a consumer means an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession.

1. Definitions

'Carrier' means a third party transit delivery business.

'Company' means Ridgeway Plant Co Limited trading as Ridgeway whose registered office is at 103 Airport Road West, Belfast, Northern Ireland BT3 9ED;

'Contract' means these terms together with any and all documentation relating to the agreement between the Company and the Customer;

'Customer' means the person, firm or corporate entity to whom the Company has agreed to provide the Products and or Services subject to these terms and conditions;

"Delivery date" means the date specified by the Company when the Products and or Services are to be delivered

'Force majeure' means in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, any strike, lock-out or other industrial action);

"Price" means the price set out in the list of prices of the Products/Services maintained by the Company as amended from time to time or such other price as the parties may agree in writing plus such carriage, packing, insurance or other charges or interest on such as may be quoted by the Company or as may apply in accordance with these terms and conditions;

'Products' means all goods, plant and/or services to be provided by the Company under the Contract including without limitation any Services including training and or on Site services and or any delivery and/or collection service in respect of the Products. For the avoidance of doubt where separate Company terms and

conditions apply to the provision of any Services those terms and conditions shall take precedence over these terms and conditions of sale;

'Purchase Order' shall include any request whether made verbally or in writing in respect of which the Customer offers to buy the Products/Services from the Company;

'Site' means the place or places provided or made available by the Customer to the Company for the purposes of delivery of the Products and or performance of the Services;

'Working-hours' means 8:00am to 17:00 pm Monday to Friday and Saturday 09:00 to 12:00 noon inclusive but excluding public holidays.

2. Basis of contract

2.1 These terms shall apply to and be incorporated into the Contract and prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's purchase order whether made verbally or in writing, or the Customer's acceptance of a quotation for the supply of Products and or Services by the Company, constitutes an offer by the Customer to purchase Products from the Company and or to provide the Services on these terms and conditions. No offer placed by the Customer shall be accepted by the Company other than by a written acknowledgment, including by email, issued and executed by the Company or, if earlier, by the Company starting to provide the Products and or Services, when a contract for the supply and purchase of the Products and or Services on these terms will be established. The Customer's standard terms and conditions, if any, attached to, enclosed with or referred to in any purchase order or other document shall not govern the Contract.

2.3 Each order which is accepted by the Company in accordance with clause 2.2 shall constitute a separate legally binding contract between the Company and the Customer.

2.4 No addition, alteration or substitution of these terms will bind the Company or form any part of any contract unless they are expressly accepted in writing by a person authorised to sign on behalf of the Company.

2.5 The Company's employees or agents are not authorised to make any representation with regard to the subject matter of the Contract. Any advice, recommendation or representation given by the Company or its employees or agents to the Customer or its employees or agents as to the delivery, storage, application or use of the Products or otherwise which is not confirmed in writing by the Company is

followed or acted upon entirely at the Customer's own risk, and, accordingly, the Company shall not be liable for any such advice, recommendation or representation which is not so confirmed.

2.6 The Company reserves the right to refuse to provide the Products and or Services where, in the opinion of the Company, delivery of the Products and or performance of the Services would pose a risk to the health and safety of any person including, without limitation, as a result of the Site, any facilities or equipment provided by the Customer or any failure of the Customer to comply with any of its obligations under the Contract.

2.7 The Customer is wholly responsible for ensuring the accuracy of the terms of any order and any applicable specification. Any recommendation, design proposal or suggestion relating to any delivery, use, storage or handling of the Products/Services made by the Company either in sales and technical literature or in response to a specific enquiry or otherwise is given in good faith but it is strictly for the Customer to satisfy itself of the suitability of the Products for its own particular purposes and the Customer accepts it does not rely on any such recommendation, design proposal, suggestion or representation.

2.8 Any description given or applied to the Products is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Customer hereby affirms that it does not in any way rely on any description, design proposal or other document when entering into the contract. Any typographical, clerical or other error or omission in any sales literature, quotation, design proposal, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

2.9 Where a sample of the Products is shown to and inspected by the Customer, the parties hereto accept that such a sample is so shown and inspected for the sole purpose of enabling the Customer to judge for itself the quality of the bulk, and not so far as to constitute a sale by sample.

2.10 All Products are subject to stock availability at the time of ordering. No warranty is given by the Company that the goods ordered are actually in stock at the time of ordering.

2.11 Whilst the Company agrees to take all steps reasonably required to fulfil its obligations under this agreement in the normal course, the Company shall not be obliged to give the Customer any priority over any other customer of the Company with regard to the supply or delivery of the Products.

2.12 No cancellation of the whole or any part of any order is permitted except where expressly agreed by the Company in writing. In the event of such agreed cancellation the Customer shall indemnify the Company against all expenses

incurred as a result of such cancellation. In any case in which the Company is required to place a deposit with a manufacturer or supplier in respect of a Customer's order then the Company may require the Customer to reimburse the Company with this sum in the event of cancellation of the order or any part thereof by the Customer. Where cancellation involves Products designed, made or ordered specially for the Customer then the Customer will be liable for any costs incurred by the Company in respect of such cancellation.

2.13 The Company reserves the right to refuse to accept any order or perform any Contract if the Customer's arrangements for payment or credit appear to be or become unsatisfactory.

2.14 The Company reserves the right, in the event that the Customer is not a limited liability company, to make searches of the Customer's details, background and credit history with credit reference and fraud prevention agencies prior to carrying out any obligations in these Terms and Conditions. Such credit reference agencies may, at their absolute discretion, keep a record of the search and share that information with other businesses.

3. Price

3.1 The price of the Products shall be as published in the price list current at the date of delivery of the Products. The price is exclusive of VAT, which shall be due at the rate ruling on the date of a VAT invoice, or any analogous sales tax, carriage, freight, postage or insurance costs.

3.2 Prices quoted are applicable to the quantity specification delivery dates and information provided by the Customer. If the order placed varies or delay is caused by the Customer's instructions or lack of instructions the Company at its sole discretion shall be entitled to adjust the price.

3.3 The price includes the cost of delivery on week days during normal working hours. An additional charge will be made if the Company agrees to a Customer's request to deliver outside normal Working Hours.

3.4 The Customer shall be responsible for all bank charges in connection with the payment of the Price, and if any deduction is made by a bank from any payment made by the Customer, the Customer shall forthwith on written request by the Company pay such additional amount as will result in the Company receiving the amount that would have been payable under this agreement had no such charges been deducted.

4. Payment

4.1 Credit Accounts will be subject to satisfactory trade, bankers and other requisite references, and where no other terms of payment have been specifically agreed in writing, the Company's terms are cash payment in full to be made within 30 days from the date of the invoice supplied by the Company.

4.2 The Company reserves the right to refuse to execute any order or contract if the arrangements for payment are or the Customer's credit is not satisfactory to the Company and in its sole discretion the Company may require payment for each consignment when it is available and before it is despatched in which case delivery will not be effected until the Company is in receipt of cleared funds.

4.3 The Customer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set off or counterclaim which the Customer may claim.

4.4 The Company shall be entitled at all times to set off any debt or claim of whatever nature which it may have against the Customer.

4.5 Any invoice disputes shall be raised in writing by the Customer within 3 working days of receipt.

4.6 If the Customer fails to make any payment when due then without prejudice to any other right or remedy available to the Company the Company shall be entitled to:

4.6.1 to claim interest and/or compensation for reasonable debt recovery costs under

the Late Payment of Commercial Debts (Interest) Act 1998 as amended;
and

4.6.2 to require the Customer to pay, in advance, for any Products and or Services (or any part of the Products and or Services) which have not yet been performed; and

4.6.3 not to deliver any further Products until any outstanding invoice is paid in full.

5. Delivery

5.1 The Company's liability for delivery ends at the tailboard of its vehicle or the premises of its suppliers when the Products are delivered direct from suppliers to the Customer or where Products are delivered by an independent carrier by delivery to that carrier.

5.2 Delivery dates are estimates only.

5.3 Time for delivery shall not be of the essence of the Contract and the Company shall not be liable for any delay in Delivery of the Products howsoever caused.

5.4 The Company shall not be liable for any loss damages costs or expenses of any kind whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay in delivery of the Products or failure to deliver the Products in a reasonable time.

5.5 If the Company fails to deliver the Products its entire liability shall be limited to the excess (if any) over the price of the Products, of the cost to the Customer (purchasing in the cheapest market reasonably available to the Customer) of similar goods to replace those not delivered.

5.6 If the Customer fails to take or make arrangements to accept delivery or collect the Products or if the Company is unable to deliver because of inadequate access or instructions delivery shall be deemed to have taken place and the Company without prejudice to any other right or remedy available to it shall be entitled to:

5.6.1 make additional charges for failed delivery

5.6.2 store the Products at the Customer's risk and costs

5.6.3 invoice the Customer for the Products

5.6.4 terminate this Contract without liability on the Company's part

5.6.5 recover from the Customer all costs and losses incurred by the Company

5.7 The Company reserves the right to make delivery by instalments. Where delivery is made by instalments, each instalment is to be deemed a separate contract and any delay, default or non-delivery of any one instalment shall not entitle the Customer to cancel the remainder of the Contract. The Company reserves the right to levy additional charges for deliveries by instalments for any reason whatsoever.

5.8 Unless the Company agrees otherwise, the Customer shall provide adequate labour, forklift and other facilities at the point of delivery to enable the Products to be safely and properly unloaded and to enable unloading to be completed with reasonable speed. If the Company's delivery vehicle is kept waiting for an unreasonable time or is obliged to return without completing delivery or if the Company provides additional staff to unload Products an additional charge will be made.

5.9 The Customer shall indemnify the Company against any claims arising from such unloading except to the extent that any such claims relate to personal injury, death or damage to property which is caused by the negligence of the Company's employees or agents.

5.10 In the event that an incorrect quantity of the Products is delivered the Customer shall not be able to object to or reject the Products or any of them on that ground alone.

5.11 The Company shall deliver the Products as near as possible to the delivery address as a safe hard road permits. The Company reserves the right to refuse to deliver the Products to premises considered in the discretion of the driver to be unsuitable.

5.12 If Products are to be deposited other than on the Customer's private premises the Customer shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property and will indemnify the Company in respect of all losses damages costs and expenses it may incur as a result of such delivery whether on the public highway or elsewhere.

5.13 The Customer will not be entitled to terminate the Contract as a whole if the Company fails to meet any given times or dates for delivery unless such a delay exceeds 40 Working Days.

5.14 In the event that the Company delivers an incorrect quantity of the Products the Customer shall not be able to object to or reject the Products or any of them on that ground alone.

5.15 Without prejudice to Condition 5.7, the Customer shall not fail or refuse to accept delivery of any Products on the grounds that the quantity is below the quantity ordered. Provided that the Customer notifies the Company and the Carrier of any shortage within three (3) Working Days after the Products have been delivered or were collected by the Customer and provided the Company has agreed the amount of the shortage, the Company may deliver, within a reasonable time, the balance of the Products required to bring the total to the quantity ordered.

5.16 If the Company delivers in excess of 105% of the quantity set out in the Order the Customer shall:

5.16.1 notify the Company immediately; and

5.16.2 request the Company to collect (at the Company's expense) the excess quantity

of the Products; or

5.16.3 agree to pay the Company for the excess Products pro rata at the Price and be

invoiced accordingly for this.

5.17 If the Company delivers quantities between 100-105% of the Products set out in the order there shall be no consequences for either party.

5.18 Subject to the other provisions of these Conditions, the Company shall not be liable for any direct, indirect or consequential loss (all of which include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in delivery

or any other time given for delivery of the Products even if caused by the Company's negligence.

5.19 If the Company is prevented, hindered or delayed from delivering the Products because of a Force Majeure event, then the Company may give notice to you at any time in writing either:-

5.19.1 cancelling the Company's outstanding obligations to deliver Products under

these terms and conditions, or

5.19.2 extending the time for delivery of the Products outstanding by a period not

exceeding three months.

5.20 If notice is given under clause 5.19:

5.20.1 the Company shall not be liable to the Customer in damages for any loss

whether direct, indirect or consequential of whatever nature which the Customer may incur as a result: and

5.20.2 the time for delivery shall be extended accordingly and the Company shall not

be in breach of Contract due to the late delivery.

5.21 The above provisions of this Clause 5 do not affect the Company's right to recover the price of any Products that have already been invoiced to the Customer or in respect of which risk has passed to the Customer.

6. Inspection

6.1 The Customer shall inspect the Products at the place and time of unloading but nothing in these Terms and Conditions shall require the Customer to break packaging and/or unpack Products which are intended to be stored before use.

6.2 At the place and time of unloading and if the Customer believes there is loss or damage to the Products during transit which may be the Company's responsibility, the Customer must notify the Company in writing within three (3) Working Days of delivery. If the Company does not receive such written notice within the stated time scale then the Company will not be liable to the Customer for any loss or damage to the Products arising during transit. If Products have been damaged during transit then all packaging materials must be retained for examination by the Company, the carrier or their agents.

6.3 Where it is or would have been apparent on a reasonable inspection that the Products are not in conformity with the order or (where the order is for sale by

sample) that the bulk does not compare with the sample the Customer must give the Company written notice within 3 working days.

6.4 If the Customer fails to give the Company notice within the time stated in clause 6.2 above the Products will be deemed to have been accepted and the Customer shall not be entitled and shall irrevocably and unconditionally waive any right to reject the Products.

7. Risk and title

7.1 Risk in the Products shall pass to the Customer when the Products are delivered.

7.2 The title to the Products shall remain with the Company until the Customer pays the Price of the Products and any other sums outstanding between the Customer and the Company.

7.3 Until title passes:-

7.3.1 The Customer shall hold the Products as the Company's fiduciary agent and bailee

7.3.2 the Products shall be stored separately from any other goods and the Customer

shall not interfere with any identification marks labels batch numbers or serial numbers on the Products;

7.3.3 maintain the Products in a satisfactory condition and keep them insured, on the

Customer's insurance, for the Price against all risks and provide the Company with a copy of such insurance at the Company's request;

7.3.4 hold the proceeds of any insurance referred to in Condition 7.3.3 on trust for the

Company and do not mix them with any other money or pay the money into an overdrawn bank account.

7.3.3 The Company agrees that the Customer may use or agree to sell the Products as

principal and not as the Company's agents in the ordinary course of the Customer's business subject to the following express conditions:

(a) that the entire proceeds of any sale or insurance proceeds received in respect of

the Products are held in trust for the Company and not mixed with any other

monies or paid into an overdrawn bank account and shall at all times be

identifiable as the Company's money;

(b) any sale shall be to an unconnected third party at not less than the value of the

Products when sold to the Customer;

(c) that the Customer notifies its customer that the Company remains the legal

owner of the Products until the Company receives payment in accordance with

Clause 7.2 and the Company reserves the right to label the Products accordingly;

(d) that the Customer will at the Company's request and at the Customer's expense

assign to the Company all rights the Customer may have against its customer;

(e) the Company can revoke the Customer's right to sell and use the Products at

any time by written notice to the Customer if the Customer has failed to pay any

sums due to the Company (whether relating to the Goods or other goods) within

ten (10) Working Days of the due date or if the Company has genuine doubts as to

the Customer's solvency.

(f) that the Customer's right to use or sell the Products may be withdrawn by the

Company on notice at any time and will automatically cease if the Customer

become Insolvent.

7.3.4 If the Products are to become affixed to any land or building the Customer must

ensure that they are capable of removal without material injury to the land or

building and the Customer shall take all necessary steps to prevent title to the

Products from passing to the owner or landlord of such land or building.

7.4 The Customer's power of sale and use under Clause 7.3 above shall automatically cease if:

7.4..1 the Customer has a petition presented for its winding up; or

7.4.2 (if the Customer is an individual) the Customer dies or becomes incapacitated; or
7.4.3 the Customer passes a resolution for voluntary winding up otherwise than for the purpose of a bona fide amalgamation or reconstruction; or
7.4.4 the Customer compounds with its creditors or has a receiver appointed over all or any part of its assets; or
7.4.5 a petition for an administration order is presented or is intended to be presented in respect of the Customer; or
7.4.6 the Customer is or becomes bankrupt or insolvent; or
7.4.7 the Customer enters into any arrangements with creditors; or
7.4.8 the Customer takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under foreign law.

7.5 The Company shall be entitled to recover the price of the Products including VAT even though the property in any of the Products remains with the Company.

7.6 The Customer will not pledge the Products and will keep them free from, and indemnify the Company against, any charge, lien or other encumbrance on them. If the Customer does pledge or in any way charge any of the Products, all monies owing to the Company by the Customer shall (without prejudice to any other right or remedy the Company may have) immediately become due and payable.

7.7 The Company shall be entitled at any time to recover any or all of the Products to which the Company has title and for that purpose the Company may with such transport as is necessary enter upon any premises occupied by the Customer or to which the Customer has access and where the Products may be or are believed to be situated and for the purposes of such repossession the Customer grants to the Company its agents and employees an irrevocable licence to enter on any of the Customer's premises where the Products are stored or where the Company may reasonably believe they may be stored.

8. Returns

8.1 Requests for the return of Products must be made to the Company's offices and any credit agreed will be subject to a minimum 35% deduction for re-stocking. Drivers have instructions not to accept returns of Products without prior instructions. Under no circumstances will the Company accept the return of Products which have been specially procured by the Company to special instructions or which have deteriorated.

8.2 Nothing in clause 8.1 shall oblige the Company to accept the return of Products and it will be entirely within the Company's sole and absolute discretion as to whether or not the return is to be accepted and under what circumstances.

8.3 If a request for the return of Products is accepted by the Company then such return shall be the Customer's only remedy for defects in Products which have not been used by the Customer and for the avoidance of doubt the Company shall not be liable for storage costs; warehousing; processing; manufacturing; labour; or any other indirect or consequential loss.

9. Customer obligations

9.1 In addition to the obligations contained elsewhere in these Terms and Conditions the Customer shall:

9.1.1 ensure the accuracy of each order for the Products given by the Customer;

9.1.2 promptly provide the Company with all necessary information relating to the

Products which is reasonably requested by the Company to enable the Company

to fulfil each order in accordance with its terms;

9.1.3 obtain any necessary import licences or other requisite documents (except those

agreed to be provided by the Company), and otherwise comply with any applicable laws or regulations concerning the importation of the Products,

and

pay all applicable customs duties, taxes and charges in respect of the importation

of the Products and their resale.

9.1.4 not do anything which might at any time give rise to a breach of the warranties

set out in clause 10 ;

9.1.5 the Customer shall be liable to pay to the Company on demand all reasonable

costs, charges or losses sustained or incurred by the Company including without

loss of limitation any direct, indirect or consequential losses, loss of profit and

reputation, loss or damage to property and those arising from injury to or death

of any person and loss of opportunity to deploy resources elsewhere arising

directly or indirectly from the Customer'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 Customer in writing.

9.1.6 the Customer shall provide its own personnel with all necessary personal protective clothing and equipment and to ensure compliance with all health and safety regulations as regards unloading and or accepting delivery of the Products.

9.1.7 the Customer shall provide its risk assessment and method statement to the Company and or the Carrier in respect of taking delivery and or unloading of the Products.

9.1.8 the Customer shall comply with the approved codes of practice and or guidance published by the Health and Safety Executive Northern Ireland or any comparable body in any other jurisdiction

9.1.9 the Customer shall independently and without recourse to the Company obtain all relevant knowledge to enable it, its employees and all relevant third parties, to safely operate the Products.

10. Warranties

10.1 The Company warrants that it will use reasonable care and skill in supplying the Products and or Services to the standard generally accepted within the industry, sector or profession in which the Company operates for the type of Products and or Services provided by the Company.

10.2 The Company shall not be liable under clause 10 if a failure to meet the warranties set out therein is caused by:

10.2.1 modifications or customisation made by or on behalf of the Customer to the Products and or Services without the written authorisation of the Company or where such authorisation is given with conditions those conditions were breached;

10.2.2 any service which is provided by any third party; or

10.2.3 a breach by the Customer of the Customer warranties set out in clause 10.4 or the obligations set out in clause 9.

10.3 If the Company receives a written notice from the Customer identifying a breach of the warranties set out in clause 10.1 then the Company shall at its own expense promptly remedy such breach or failure provided that the Company shall have no liability or obligations under the warranties unless it shall have received written notice of the defect or error within 3 days of the Company's invoice.

10.4 The Company provides no warranty that any result or objective can or will be achieved or attained at all by any date whether stated in these Terms and Conditions or elsewhere.

10.5 The Customer warrants that:

10.5.1 it is entitled to enter into a contract with the Company and that by doing so

it is not in breach of any third party rights or contractual obligations;

10.5.2 it will not do or omit to do any act or thing which might impede or otherwise adversely impact on the Company's ability to perform its obligations under the Contract or which otherwise does or might adversely

affect the Products and or Services;

10.5.3 any equipment which it provides to the Company in connection with the Products and or Services is sufficiently capable of performing its purpose;

10.5.4 it has and will throughout the duration of the contract comply with its obligations under the Data Protection Act 1998 and the General Data Protection Regulations in respect of any data which it may transmit or

otherwise pass on to the Company for processing as part of the Products and or Services and that without prejudice to the foregoing it has sought those

consents necessary as to enable the Company to lawfully process any information relating to a third party whether an individual, business or corporate entity;

10.5.5 it has sought regulatory and legislative consents as are necessary to enable the completion of the order by the Company;

10.5.6 all information and material which it provided to the Company was and is

accurate, up to date and sufficient for the completion of the order by
the

Company;

10.5.7 it will not employ, offer to employ, or otherwise entice or attempt to
entice away any employee, officer or other representative of the
Company

save that this restriction shall not apply upon the expiry of 12 months
following the later of termination or completion of the contract and or
Services;

10.5.8 it has not done nor shall not do any act or thing that contravenes the
Bribery

Act 2010 or any other applicable anti bribery or anti money laundering
laws

and or regulations; and

10.5.9 it shall immediately notify the Company in writing on becoming aware
or

suspecting any failure to comply with clause 10.5.9. Any failure by
the

Customer to comply with clauses 10.5.9 and 10.5.10 shall entitle the
Company to terminate the Contract immediately at no cost, liability

or

penalty to the Company and without prejudice to any other rights or
remedies that may have accrued to the Customer's benefit under or

in

connection with these Terms and Conditions.

10.6 If the Customer receives a written notice from the Company identifying a breach
of the warranties set out in clause 10.5 then the Customer shall, at its own expense
promptly remedy such breach or failure or otherwise hold the Company harmless
against such breach.

11. Limitation of liability

11.1 The Company shall indemnify the Customer for personal injury or death caused
by the negligence of the Company's employees in connection with the performance
of their duties under these terms and conditions.

11.2 Save in respect of claims for death or personal injury arising from the
Company's negligence, in no event will the Company be liable for any damages
resulting from loss of use, loss of data, lost profits, loss of anticipated savings, nor for
any damages that are an indirect or secondary consequence of any act or omission
of the Company whether such damages are or were reasonably foreseeable or
actually foreseen.

11.3 The Company will not be liable for any delay caused to the Customer as a result of the failure or delay by the Customer in complying with any of the provisions of clauses 9 and 10.5.

11.4 Except as provided above in the case of personal injury or death, the Company's maximum liability to the Customer under these Terms and Conditions or otherwise for any cause whatsoever (whether in the form of a refund, the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to the lesser of:

11.4.1 the sum for which the Company carries comprehensive insurance cover (subject to the Company actually recovering such sum from the insurer); or

11.4.2 a sum equivalent to the Price paid to the Company in respect of the order

which is the subject of the Customer's claim plus damages limited to 20% of

the same amount for any additional costs directly, reasonably and necessarily incurred by the Customer in obtaining alternative services.

11.5 The Company will not be liable under Clause 11.4 for any matter arising out of a design proposal nor for any defects as follows:

11.5.1 if the defect would have been apparent on a reasonable inspection under

Clause 6.1 of these Terms and Conditions at the time of unloading unless the

Customer gives the Company written notice within 3 working days of Delivery

11.5.2 if the defect arises from fair wear and tear;

11.5.3 if the defect arises from the Customer's wilful damage negligence abnormal

working conditions mis-use alteration or repair of the Products failure to

follow British Standards or EU Standards or industry instructions relevant to

the Products or storage of the Products in unsuitable conditions; or

11.5.4 unless after discovery of the defect the Company is given a reasonable

opportunity to inspect the Products before they are used or in any way

interfered with. The Company acknowledges that the costs of suspending

works are relevant to the determination of what is a reasonable opportunity

and this sub-clause shall not apply to any works affecting the Products which it may be reasonably necessary to carry out in the interests of safety and/or as emergency measures.

11.6 If the Products are not manufactured by the Company or have been processed by a third party whether or not at the Company's or the Customer's request the Company's liability in respect of any defect in workmanship or materials of the Products will be limited to such rights against the manufacturer or the third party as the Company may have in respect of the Products. The Company will on written request provide details of its rights against the manufacturer or third party and any other terms and conditions imposed by the manufacturer or the third party and so far as possible will on request assign to the Customer any such rights.

11.7 All liability that is not expressly assumed under the Contract and or in these Terms and Conditions is hereby excluded to the fullest extent allowed by law. These limitations will apply regardless of the form of action, whether under statute, tort (including negligence), or any other form of action. For the purposes of this clause "the Company" includes its employees, sub-contractors and suppliers. The Customer acknowledges that the Company's employees, sub-contractors and suppliers shall have the benefit of the limits and exclusions of liability set out in this clause in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in these terms and conditions shall exclude or limit liability for fraudulent misrepresentation.

11.8 The Customer and the Company acknowledge and agree that the limitations and exclusions of liability set out in this clause are reasonable and have been agreed taking into account the commercial value of the services to be provided and the commercial standing of each party.

11.9 No claim or action, regardless of form, arising out of these Terms and Conditions or a Quotation may be brought by either party more than 3 years after the cause of action has accrued.

12. Indemnity to the Company

The Customer shall indemnify the Company against all actions, claims or demands for losses suffered or incurred by the Company including (without limitation) claims by third parties for fraud, in tort or otherwise arising directly or indirectly in connection with the use, functioning or state of the Products except to the extent that the same are caused by the Company's negligence or default. The Customer shall indemnify the Company against all actions, claims or demands for losses suffered or incurred by the Company including (without limitation) claims by third parties for fraud, in tort or otherwise arising directly or indirectly in connection with the use, functioning or state of the Products except to the extent that the same are caused by the Company's negligence or default.

13. Termination

13.1 These Terms and Conditions are subject to the rights of termination arising in any other clause of these Terms and Conditions. Such termination will not however affect the applicability of the terms of these Terms and Conditions to any order in respect of which the Products have not yet been delivered and which have not themselves been terminated pursuant to any such clauses.

13.2 The Company may terminate the Contract by giving the other party 30 days prior notice of such termination.

13.3 Either party shall be entitled to terminate the Contract without liability to the other party by giving notice to the other party at any time if:

13.3.1 that other party commits a breach of any of the terms of the Contract and if the breach is capable of remedy, fails to remedy the breach within 30 days after

receipt of notice in writing to do so; or

13.3.2 that the other party makes any voluntary arrangement with its creditors or

otherwise becomes subject to an administration order or goes into liquidation

than for the purpose of amalgamation or reconstruction; or

13.3.3 an encumbrancer takes possession, or a receiver is appointed, of any of the

property or assets of that other party; or

13.3.4 that other party ceases or threatens to cease to carry on business; or

13.3.5 the Customer or the Company reasonably apprehends that any of the events

mentioned above is about to occur in relation to the other party and notifies the

other party accordingly.

13.4 Termination of the Contract shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuation in force of any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after such termination.

13.5 On termination of the Contract the Customer shall pay for all Products and or Services provided up to the date of termination and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by the Company for the delivery of the Products and or Services prior to the date of termination.

14. Assignment

14.1 The Company may assign, transfer or sub contract in whole or in part any of its rights or obligations under these Terms and Conditions.

14.2 The Customer shall not assign, transfer or sub-contract in whole or in part of any of its rights or obligations under these Terms and Conditions without the prior written consent of the Company.

14.3 Notwithstanding the foregoing, either party may assign its rights and licences and transfer its obligations under these terms and conditions or any order to any acquirer of all or of substantially all of such party's equity securities, assets or business relating to the subject matter of the Contract. Any attempted assignment or transfer in violation of this clause 14 will be void and without effect.

15. Amendments

The Contract may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except in accordance with any other clauses of these Terms and Conditions.

16. Nature of the relationship

The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary or other relationship between the parties other than the contractual relationship expressly provided for in these Terms and Conditions.

17. Severance

If any provisions of these Terms and Conditions is or becomes prohibited by law or is judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these Terms and Conditions and rendered ineffective as far as possible without modifying the remaining provisions of these Terms and Conditions, and shall not in any way affect any other circumstances of or the validity or enforcement of the remainder of these Terms and Conditions.

18. Waiver

No failure or delay by the Company in exercising any right, power or privilege under these Terms and Conditions shall impair the same or operate as a waiver of the

same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. These rights and remedies provided in these Terms and Conditions are cumulative and not exclusive of any rights and remedies provided by law.

19. Interpretation

In these terms and conditions unless the context otherwise requires:

19.1 words incorporating any gender include every gender;

19.2 words importing the singular number include the plural number and vice versa;

19.3 words importing persons include firms, companies and corporations and vice versa;

19.4 references to numbered clauses and annexes are references to the relevant clause in or annex to these terms and conditions;

19.5 reference in any annex to these terms and conditions to numbered paragraphs or clauses relate to the numbered paragraphs or clauses of that annex;

19.6 the headings to the clauses, annexes and paragraphs of these terms and conditions;

19.7 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

19.8 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

19.9 any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.

20. Successors and assignees

20.1 These Terms and Conditions shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assignees and references to a party in these Terms and Conditions shall include its successors and permitted assignees.

20.2 In these Terms and Conditions references to a party include references to a person:

20.2.1 who for the time being is entitled (by assignment, novation or otherwise) to those that party's rights under these Terms and Conditions (or any interest in those rights); or

20.2.2. who, as administrator, liquidator or otherwise, is entitled to exercise those rights; and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party.

21. Set off

Where the Company has incurred any liability to the other party, whether under these Terms and Conditions or otherwise, and whether such liability is liquidated or unliquidated, the Company may set off the amount of such liability against any sum that would otherwise be due to the Company under these Terms and Conditions.

22. Third parties

The parties confirm their intent not to confer any rights on any third parties by virtue of these Terms and Conditions and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms and Conditions. The parties do not require the consent of any third party to terminate, rescind or to agree any variation, waiver or settlement in relation to it.

23. Force majeure

23.1 Neither party shall have any liability under or be deemed to be in breach of these Terms and Conditions for any delays or failure in performance of these Terms and Conditions which result from circumstances beyond the reasonable control of that party.

23.2 If such circumstances continue for a continuous period of more than 30 days the non-affected party may terminate these Terms and Conditions by written notice to the other party and in such event neither party shall have any further obligations under these Terms and Conditions save that the Customer shall immediately pay the Company all amounts due to the Company up until the date of such termination.

24. Notices

24.1 All notices under these Terms and Conditions shall be in writing and must be in English.

24.2 Notices shall be deemed to have been duly given:

24.2.1 when delivered, if delivered by courier or other messenger (including registered

mail) during normal business hours of the recipient; or

24.2.2 when sent, if transmitted by fax or email and a successful transmission report or

return receipt is generated; or

24.2.3 on the fifth business day of the sender following mailing, if mailed by national

ordinary mail, postage prepaid; or

24.2.4 on the tenth business day of the sender following mailing, if mailed by airmail,

postage prepaid, in each case addressed to the most recent address, email

address, or facsimile number notified to the other.

25. Proper law and jurisdiction

25.1 The parties agree that the place of performance of the Contract is Northern Ireland. The validity, construction and performance of these Terms and Conditions shall be governed by Northern Irish law and shall be subject to the exclusive jurisdiction of the Northern Irish courts to which the Parties submit notwithstanding the conflict of law provisions and other mandatory legal provisions save that the Company shall have the right to sue to recover its fees in any jurisdiction in which the Customer is operating or has assets.

25.2 Where there is a dispute the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. A representative from senior management of each party ("representatives") shall meet in person or communicate by telephone within 5 Working Days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by each party. The representatives shall produce a report about the nature of the dispute in detail to their respective boards and if no agreement is reached on corrective action, then the chief executives of each party shall meet in person or communicate by telephone, to facilitate an agreement within 5 working days of a written notice by one to the other. If the dispute cannot be resolved at board level within a further 5 Working Days, or if the agreed upon completion dates in any written plan of

corrective action are exceeded, either party may seek its legal remedies as provided below.

25.3 If the parties cannot resolve the dispute by the procedure set out above, the parties shall irrevocably submit to the exclusive jurisdiction of the Courts of Northern Ireland for the purposes of hearing and determining any dispute arising out of these terms and conditions.

25.4 While the dispute resolution procedure above is in progress and either party has an obligation to make a payment to the other party, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the name of the relevant party at a clearing bank and such payment shall be a good discharge of that party's payment obligations under these terms and conditions. Following resolution of the dispute, whether by the above procedure or legal proceedings, the sum held in such account shall be payable as determined in accordance with the above procedure or legal proceedings and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

