

- 9.1.3 The Buyer may sell the Goods in the normal course of its business and may pass good title to its customer being a bona fide purchaser for value without notice of the Seller's rights provided that the Seller may at any time revoke the Buyer's said power of sale in the circumstances set out in Condition 6.3 and Condition 7 of these Conditions.
- 9.1.4 Upon determination of the Buyer's power of sale the Seller shall be entitled by itself its servants or agents to enter upon any of the Buyer's premises for the purpose of removing and repossessing such Goods or their proceeds of sale and the Seller shall be entitled to claim from the Buyer the costs and expenses incurred by the Seller in and ancillary to the process of such removal and repossession.
- 9.2 Nothing in this Condition 9 shall entitle the Buyer to return the Goods or to delay payment thereof or constitute or be deemed to have constituted the Buyer as the Seller's agent or render the Seller liable to any third party for any unauthorised representation or warranty made or given by the Buyer to such third party in relation to the Goods or prevent the Seller from maintaining an action for the price of the Goods notwithstanding that the property in the Goods may not have passed to the Buyer.
- 9.3 In the case of sales of goods in Scotland, clause 9.1 hereof shall not apply and in place thereof there shall be substituted the following clause:
"9.1.(a) Until the purchase price of the Goods comprised in this contract between the Buyer and the Seller shall have been paid in full (and if by cheque then only upon clearance)."

and for the avoidance of doubt sub-clauses 9.1.1 to 9.1.4 inclusive shall continue to apply.

10 Lien

- The Seller retains a general lien on any of the Buyer's equipment or materials in its possession for any unpaid balance the Buyer may owe to the Seller. The Seller shall be entitled to sell such equipment or materials in the event that payment is not made in full within 28 days of notice given to the Buyer by the Seller or its exercise of the lien. The proceeds of sale may be taken by the Seller for reimbursement of the expense of exercise of the lien and the sale, and payment of the said balance, and the Seller shall account for any surplus.

11 Delivery

- 11.1 Delivery shall occur when Goods are made available for collection by the Seller at its premises or are transferred to a carrier for delivery to the Buyer's premises.
- 11.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 11.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 11.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 11.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions or access to his premises so that the Seller is prevented from making delivery at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may: 11.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage and of any unsuccessful attempt to deliver the Goods; or
- 11.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage, attempted delivery, insurance and selling expenses) account to the Buyer for the excess over the price the Goods under the Contract or charge the Buyer for any shortfall below the price of the Goods under the Contract.

12 Warranties and Liabilities

- 12.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from delivery ("the Warranty Period").
- 12.2 The above warranty is given by the Seller subject to the Seller having no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval. The Seller reserves the right to make a handling charge if the Goods are found not to be in breach of warranty.
- 12.3 IF THE GOODS ARE SOLD BY THE SELLER TO THE BUYER AS A CONSUMER TRANSACTION (AS DEFINED BY THE CONSUMER TRANSACTIONS (RESTRICTIONS ON STATEMENTS) ORDER 1976) THE STATUTORY RIGHTS OF THE BUYER ARE NOT AFFECTED BY THESE CONDITIONS.
- 12.4 Any warranty claim by the Buyer must be notified to the Seller in Writing (including a description of the fault), the Seller must be allowed to inspect the Goods and (should the Seller request) the Goods must be returned to the Seller's service department (carriage paid) within the Warranty Period.
- 12.5 Where any valid warranty claim is made in accordance with these Conditions, the Seller at the Seller's sole discretion shall replace the Goods (or the part in question) free of charge or refund to the Buyer the price of the Goods and postage and packing (or a proportionate part of the price in respect of the part in question), but the Seller shall have no further liability to the Buyer.
- 12.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for any special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with

the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

- 12.7 UNLESS STATED EXPLICITLY IN WRITING THE SELLER HAS PRICED THIS CONTRACT ON THE BASIS THAT THE SELLER'S LIABILITY FOR CONSEQUENTIAL LOSS HAS BEEN EXCLUDED AND ITS LIABILITY FOR OTHER LOSS HAS BEEN EXCLUDED OR LIMITED BY THESE TERMS. IF THE BUYER WISHES THE SELLER TO BEAR LIABILITY FOR ADDITIONAL LOSS THE SELLER MAY CONSIDER DOING SO BUT ON THE BASIS THAT THE CONTRACT PRICE WILL HAVE TO BE INCREASED TO COVER THE INCREASED RISK.
- 12.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control.

13 Health and Safety

The Buyer's attention is drawn to the provisions of Section 5 of the Health and Safety at Work Act 1974. The Seller will make available on written request such information on the Goods as is in the Seller's possession to ensure that as far as is reasonably practicable they are reasonably safe and without risk to health when properly used.

14 Intellectual Property

- 14.1 The copyright subsisting or which subsequently subsists in all documents, drawings, specifications, designs, programmes or any other material prepared by the Seller whether readable by humans or by machines shall belong to the Seller absolutely and they shall not be reproduced or disclosed or used in their original or translated form by the Buyer without the Seller's written consent for any purpose other than that for which they were furnished.
- 14.2 The Seller accepts no responsibility for the accuracy of drawings, patterns or specifications supplied by the Buyer. The Buyer shall indemnify the Seller against all claims whatsoever for damages and costs and against all liability in respect of any infringement of patent or other intellectual property rights resulting from compliance with the Buyer's instructions, express or implied and the Buyer will indemnify the Seller against any liability in respect thereof and shall pay all costs and expenses which may be incurred by the Seller in reference to any such claim. The indemnity shall extend to any amount paid on a lawyer's advice in respect of any such claim.

15 Indemnity

- 15.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then (except where Condition 14.2 applies) the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim or paid or agreed to be paid by the Buyer in settlement of the claim provided that:
- 15.1.1 The Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 15.1.2 the Buyer shall give the Seller all reasonable assistance for the purpose of such proceedings or negotiations;
- 15.1.3 except pursuant to a final award the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Seller (which shall not be unreasonable withheld);
- 15.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 15.1.5 the Seller shall be entitled to the benefit of and the Buyer shall accordingly account to the Seller for all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any third party in respect of any such claim; and
- 15.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this Condition.

16 General

- 16.1 The Seller reserves the right to sub-contract the fulfilment of the Contract (including any installation) or any part thereof.
- 16.2 The Buyer shall not assign any rights under this agreement without the prior consent in Writing of one of the Seller's directors.
- 16.3 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 or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the advice.
- 16.4 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same of any other provision.
- 16.5 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 provisions in question shall not be affected thereby.
- 16.6 The Contract shall be governed by the laws of England and the parties shall submit to the sole jurisdiction of the English Courts.

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