

## CONDITIONS OF SALE

The Customer's attention is in particular drawn to the provisions of Clause 9.

### 1. DEFINITIONS

In these Conditions of Sale ("the Conditions"):-

- 1.1 "the Company" shall mean Pailton Engineering Limited whose registered office is at Phoenix House, Holbrook Lane, Coventry CV6 4AD.
- 1.2 "the Customer" shall mean the person, firm or company with whom the Contract is made or from whom an order is received by the Company.
- 1.3 "the Contract" shall mean any contract between the Company and the Customer for the sale and purchase of the Goods.
- 1.4 "Delivery" shall, unless otherwise agreed with the Customer and stated on the Company's formal order acknowledgement, mean ex-works when the Goods are made available for collection by the Customer (whether or not the Customer collects the Goods when made available) or when the Goods are put into storage at the request of the Customer. The Goods are deemed to have been delivered whether or not they have been signed for by the Customer or the Customer's agent.
- 1.5 "the Goods" shall mean the goods agreed in the Contract to be supplied to the Customer by the Company and shall include all units, parts, accessories and related services covered by the Contract.
- 1.6 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment thereof and includes any subordinate legislation for the time being made under it. Words in the singular mean the plural and in the plural include the singular. Clause headings do not affect the interpretation of these Conditions.

### 2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall apply to all contracts of sale by the Company, whether such contracts are concluded orally or in writing, shall take precedence over all other terms or conditions of trading previously issued by the Company and shall apply to the exclusion of all terms or conditions of purchase or other conflicting terms or conditions which may be issued, provided or referred to by the Customer, except insofar as any variation is expressly accepted in writing by a Director of the Company and such signed variation is endorsed on the Company's formal acceptance of an order from the Customer.
- 2.2 These Conditions shall apply not only to the Contract but also to all orders subsequently placed by or on behalf of the Customer with the Company.
- 2.3 All quotations and tenders by the Company are deemed to be invitations to treat and shall not be offers in law, and unless otherwise stated on such quotation or tender and provided that the Company has not previously withdrawn it, any quotation or tender is valid for the period of 14 days only from its date. Prior to the Company's formal acceptance of any order by the sending of its order acknowledgement, no quotation or written or oral communication made by the Company to the Customer, nor any information about the

price, availability, delivery, design, specification or description of the Goods given to the Customer, shall have any contractual effect.

- 2.4 The Customer's offer to purchase any goods from the Company must be notified to the Company in writing. The Company is not obliged to accept any order. No contract shall come into existence between the Customer and the Company until the Customer is in receipt of the Company's express acceptance, which shall take the form of its formal order acknowledgement, and receipt by the Customer of an order acknowledgement shall be a condition precedent to the existence of a contract between the Customer and the Company. The Customer shall ensure that the terms of its order are complete and accurate and shall check that the Company's order acknowledgment and invoice correspond with the Customer's order.
- 2.5 Any order relating to a quantity of Goods to be supplied to the Customer over any future period shall constitute an order for the total quantity of such Goods and the Company shall not be under any obligation to delay manufacturing or acquiring all or any of such Goods until a future date or dates, and shall be at liberty to manufacture or acquire such Goods immediately upon acceptance for the Customer's order for the same.

### **3. PRICES AND PAYMENT**

- 3.1 Unless otherwise agreed with the Customer and stated on the Company's formal order acknowledgement, the Customer shall pay for all Goods at the price or prices charged by the Company and prevailing as at the date of delivery by the Company to the Customer or, if earlier, delivery to a carrier for onwards transmission to the Customer. Where it is agreed Delivery is not ex-works, the Customer shall in addition pay all charges for carriage insurance and packaging as are payable under the terms of these Conditions.
- 3.2 Unless otherwise agreed in writing or set out in the Company's tender or quotation, the Prices quoted for the Goods will be on an ex works basis and exclusive of delivery and off-loading charges and such costs shall be payable in addition.
- 3.3 All crates and other packing materials will be charged extra to the Goods and to any applicable delivery and insurance charges.
- 3.4 Unless otherwise agreed in writing, all prices are exclusive of VAT which will be payable in addition at the prevailing rate and of all other charges, duties, fees or taxes of any nature.
- 3.5 Payment for the Goods is due in pounds sterling not later than 30 days after the end of the month of the date of the Company's invoice for such Goods (unless a different currency or period is stated on the Company's order acknowledgement). Time for payment is of the essence. All payments should be sent to the address given on the invoice issued by the Company. No payment shall be deemed to have been received until it is received in full in cleared funds. All transmission or other charges of the paying bank shall be paid by the Customer.
- 3.6 The Customer shall make payment in full pursuant to the Contract, without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 3.7 The Company reserves the right to issue invoices electronically and transmit via email. Invoices transmitted via this media shall be deemed to be valid.

- 3.8 Any payment by the Customer may be appropriated by the Company in the absolute discretion of the Directors of the Company to any debt due from the Customer however longstanding.
- 3.10 Without prejudice to its other rights, the Company may both before and after judgment against the Customer charge interest on any overdue account at 4 percent above the base lending rate of Barclays Bank plc accruing on a daily basis until payment is made. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.11 If an account owing by the Customer is in arrears for more than 7 days, or if the Delivery and invoicing by the Company for Goods ordered would result in the existing credit limit allowed by the Company to the Customer being exceeded, the Company reserves the right to suspend all or any work in progress including manufacture of Goods for any further deliveries and to withhold any further deliveries until all monies due are paid to the Company, or, in the case of a credit limit being exceeded, until a solution has been agreed in writing with the Company, and all monies otherwise due to the Company from the Customer (including without limitation for part performance of the Contract) shall be immediately payable.
- 3.12 The Customer agrees to pay for any loss or extra cost incurred by the Company through the Customer's lack of instructions or inaccurate or inadequate instructions or drawings or the Customer's failure to take Delivery or delay in taking Delivery, or through the Customer's failure to comply with any contractual term, or through any request or act or default on the part of the Customer or the Customer's employees servants or agents.

#### **4. DELIVERY**

- 4.1 Any dates given for Delivery, shipment or manufacturing are estimates and for guidance only and in no circumstances shall the Company be liable for any delay in Delivery or performance howsoever arising. Times for Delivery shall not be of the essence of any Contract.
- 4.2 Delivery is ex-works. However where the Company agrees to arrange for the physical delivery of the Goods to any carrier or form of carriage deemed by the Company to be satisfactory, the cost of the carriage shall be charged to the Customer and shall be payable by the Customer at the same time as the Customer shall be liable to pay the price for the Goods. The Customer shall be responsible and have all risks for off-loading the Goods from the carrier at the place of Delivery. The Company shall have no responsibility for the storage at or movement to or within the Customer's place of delivery, warehouse or site.
- 4.3 Where, in connection with export sales or otherwise, the Company arranges insurance of the Goods, the Customer shall pay, in addition to all delivery costs, the full amount of the premium payable by the Company in respect of such insurance.
- 4.4 Where for any reason howsoever arising the Company considers that it is unable to make complete Delivery of all the Goods forming a part of any Contract with the Customer the Company may delay such Delivery or make partial Delivery on one or more occasion as it considers possible and the Customer's obligation to pay shall be correspondingly delayed or as the case may be proportionately reduced.
- 4.5 If the Customer fails to take Delivery of any Goods when the same are made available by the Company, the Company may determine this Contract forthwith by notice in writing to the Customer to that effect whereupon the Customer shall be deemed to have wrongfully

cancelled this contract. Alternatively, if the Customer so fails to take Delivery within 5 days after the date the Goods have been made available, the Company may arrange storage at its own premises or elsewhere on behalf of the Customer and the Customer shall be liable for the costs of storage and insurance and all other associated costs. In the event of storage, Goods will be insured and the cost of insurance will be included in the storage charge.

## **5. EXPORT SALES**

It is the Customer's obligation to obtain prior to any anticipated date of delivery all consents, licences and permissions which may be required for the export of Goods from England and/or the transport to and import into the country or place where the Goods are to be delivered. The foregoing shall include a requirement to obtain any such consent, licences or permissions which are imposed at any times prior to the date of import into the country or place required by the Customer in the Contract. In the event that any such consents, licences or permissions are not obtained prior to the anticipated date of delivery, this shall not in any way relieve the Customer of its obligations to pay for the Goods but the Customer shall forthwith notify the Company in writing of the failure to obtain such consents, licences or permissions and the Company shall thereafter be entitled to make full and complete delivery by making the Goods available at the Company's place of business and, notwithstanding the terms of any contract relating to place of delivery, in such circumstances as aforesaid the making available of such Goods at the Company's place of business shall be deemed to be complete compliance with the terms of the Contract with the Customer.

## **6. QUANTITY, SHORTAGES AND DAMAGE IN TRANSIT**

If the Customer notifies the Company in writing received by the Company within 3 days of delivery of the Goods (such time to be calculated from the date when the Goods are collected ex-works or, if the Company agrees to make physical delivery of the Goods, from the date upon which such Goods should have arrived at the Customer's premises or other destination notified to the Company in the normal course of events) of any shortages or, if the Company agrees to make physical delivery of the Goods, of any loss or damage to the Goods in transit, and the Company is satisfied that such shortages or loss or damage in transit occurred before (in those cases where the Company does agree to make physical delivery) physical delivery to the Customer, the Company will (subject to accepting such reasonable evidence of the shortage or loss or damage as it may require from the Customer) at its election either:-

- 6.1 make good the shortage or repair or replace the damaged Goods at its own cost within such time as may be reasonable for the Company having regard to its commitments or
- 6.2 issue a credit note to the Customer in respect of the shortage or the Goods which are lost or damaged

and in either case the Customer not be entitled to any other relief, compensation or other payment in respect of the shortage or lost or damaged Goods.

## **7. WARRANTIES, DESCRIPTIONS AND REPRESENTATIONS**

- 7.1 The Company warrants that if any Goods, or part thereof, shall prove to be defective in any material respect as regards materials or workmanship (subject always to the other provisions if this Clause 7) when in normal use within a period of 12 calendar months from the date of Delivery of such Goods to the Customer (such time be calculated, in the case

where the Company does not arrange physical delivery, from the date when the Goods are available for collection ex-works, and in the case where the Company does arrange physical delivery, from the date when the Goods should have been received in the normal course of events), the Company shall replace the Goods or part(s) thereof which are so defective.

7.2 For the purposes of the warranty in Clause 7.1:-

7.2.1 Where the Goods are comprised in the Company's standard product catalogue at the date of the Company's formal acceptance of the Customer's order, then if the Goods fail in a material respect to comply with the description and quality of such Goods as set out or referred to in such catalogue, when in normal use within the period referred to in Clause 7.1, they shall be defective for the purposes of Clause 7.1, provided always that notwithstanding the foregoing, in pursuance of its policy of continuous improvement the Company reserves the right to make changes without notice in materials, dimensions and designs which Company in its sole discretion considers reasonable or desirable and, provided that such change or changes made do not adversely affect the functionality or performance of the Goods, the making of any such change or changes as aforesaid shall not entitle the Customer to reject any Goods or make any claim for compensation and delivery of any Goods as so amended or altered shall be deemed to be complete compliance with the terms of the Contract with the Customer.

7.2.2 Where the Goods are ordered by reference to a drawing produced by the Company, then if the Goods fail in a material respect to correspond (within the limits or normal manufacturing tolerances) to such drawings, when in normal use within the period referred to in Clause 7.1, they shall be defective for the purposes of Clause 7.1, provided always that notwithstanding the foregoing, in pursuance of its policy of continuous improvement the Company reserves the right to make changes without notice in materials dimensions and designs which the Company in its sole discretion considers reasonable or desirable and, provided that such change or changes made do not adversely affect the functionality or performance of the Goods, the making of any such changes as aforesaid shall be entitle the Customer to reject any goods or make any claim for compensation and the delivery of Goods as so amended or altered shall be deemed to be in complete compliance with the terms of the Contract with the Customer.

7.2.3 Where the Goods are made by the Company to a drawing or specification supplied by the Customer (whether or not such drawing is prepared by the Customer). then if the Goods fail in a material respect to correspond with such drawing or specification (within the limited of normal manufacturing tolerances) when in normal use within the period referred to in Clause 7.1, they shall be defective for the purposes of Clause 7.1, provided always and it is hereby agreed and declared for the avoidance of doubt that the Company's sole responsibility under Clause 7.1 shall be as aforesaid and the Company shall not be under any obligations as regards the standards of design or specifications contained in or referred to in such drawings.

7.3 The liability of the Company under Clause 7.1 shall be subject to the following conditions:-

7.3.1 the Company shall not be liable under Clause 7.1 for so long as there are outstanding sums due to be paid by the Customer to the Company under the Contract;

7.3.2 the Customer must have notified the Company in writing of the alleged defect as soon as practicable after its discovery by the Company and made no further use of the defective Goods or part of the Goods after the alleged defect was discovered;

7.3.3 the Customer must have returned to the Company promptly at the Customer's expense any allegedly defective goods (but such Goods shall not be despatched earlier than 5 days after notifying the Company under sub-clause 7.3.2, to enable the Company to conduct an initial assessment with the Customer). As soon as reasonably practicable after the return of the allegedly defective Goods, the Company will examine them and determine whether

(a) they or any part(s) thereof are in breach of Clause 7.1, in which case the Company shall supply replacement Goods or part(s) thereof to the Customer at the expense of the Company as soon as reasonably practicable and shall reimburse (but only the extent that the Company determines that such are reasonable in the circumstances) the carriage expenses incurred by the Customer in returning the Goods to the Company; or

(b) they or any part(s) thereof are not in breach of Clause 7.1 in which case the Company shall so notify the Customer and the Company reserves the right in its discretion to invoice the Customer for (and the Customer shall pay) an administration charge for the work by the Company to examine, test and process the Goods or parts concerned improper return, which administration charge shall comprise any out of pocket costs incurred by the Company and a charge at the rate of £40 per hour for the time incurred in such work by the Company's personnel.

Any debit note raised by the Customer in respect of a claim for or return of defective Goods shall not be accepted or rejected by the Company until it has completed its examination and determination referred to in this Clause 7.1, and the Customer shall not reduce or withhold any payment to the Company in accordance with a debit note until it is accepted by the Company.

7.4 The Company's warranty in Clause 7.1 is limited to the replacement of defective Goods or parts (as applicable) and does not extend to other loss or damage arising from use of the Goods. It does not cover defects from any improper handling, storage or installation, inadequate maintenance, incorrect operation, or modifications or repairs carried out by the Customer or third parties.

7.5 Subject to sub-clause 7.2.1, illustrations, data, descriptions, figures and weights given in any of the Company's catalogues and statements made by any representative of the Company are provided merely to give the Customer a general description of the Goods concerned and do not form the basis of any contractual liability, and no warranty or condition that the Goods shall accord with such illustration, data, description, performance figures or statement is to be implied and any such warranty or condition capable of arising is hereby excluded.

7.6 The Customer acknowledges that it has not relied on any statement or representation made or given by or on behalf of the Company which is not set out in these Conditions. Any such statement or representation which is not in these Conditions shall be of no effect, unless such is contained or referred to on the Company's formal acknowledgement of order. Nothing in these Conditions shall exclude or limit the Company's liability for fraudulent misrepresentation.

## **8. FORCE MAJEURE**

- 8.1 The Company reserves the right to suspend or defer manufacture and/or any delivery(ies) in whole or in part, and to extend any time of delivery accordingly, without liability to the Customer, if Company is prevented from or delayed in performance of the Contract or the carrying on of its business generally due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, adverse weather conditions, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable parts or materials, provided that, if the event or circumstance in question continues for a continuous period in excess of 30 days, the Company shall be entitled to give notice in writing to the Customer to terminate the Contract and the Company shall not be liable to the Customer for any costs incurred or loss suffered consequent on such termination.

## **9. LIABILITY**

- 9.1 Subject to the warranty in Clause 7.1, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of any breach of these Conditions or the Contract, any use made or resale by the Customer of any Goods, or of any product incorporating any of the Goods, any representation or statement or any tortious or other unlawful act or omission including negligence arising under or in connection with the Contract.

### **9.2 SUBJECT TO CLAUSES 9.3 AND 9.4:**

9.2.1 THE COMPANY'S TOTAL LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION OR OTHERWISE, ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT SHALL BE LIMITED TO THE PRICE PAYABLE FOR THE GOODS UNDER THE CONTRACT (EXCLUDING VAT AND CARRIAGE);

9.2.2 THE COMPANY SHALL NOT BE LIABLE TO THE CUSTOMER IN CONTRACT, TORT OR OTHERWISE AND IRRESPECTIVE OF THE NEGLIGENCE OF THE COMPANY FOR ANY PURE ECONOMIC LOSS, LOSS OF PROFIT, LOSS OF BUSINESS, DEPLETION OF GOODWILL OR OTHERWISE (IN EACH CASE WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL), FOR ANY LOSS, DAMAGE, COSTS OR EXPENSES ARISING FROM OR IN CONNECTION WITH ANY PRODUCT RECALL (WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL) OR FOR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OR OTHER CLAIMS FOR CONSEQUENTIAL COMPENSATION WHATSOEVER AND HOWSOEVER CAUSED, IN EACH CASE WHICH ARISE OUT OF OR IN CONNECTION WITH THE CONTRACT;

9.2.3 THE COMPANY SHALL NOT BE LIABLE IN CONTRACT, TORT OR OTHERWISE AND IRRESPECTIVE OF THE NEGLIGENCE OF THE COMPANY FOR ANY REPRESENTATIONS, ADVICE OR ASSISTANCE GIVEN (UNDER THE CONTRACT OR OTHERWISE AND WHETHER BEFORE OR AFTER THE DATE OF THE CONTRACT) BY OR ON BEHALF OF THE COMPANY IN CONNECTION WITH THE GOODS OR THE CONTRACT UNLESS AND THEN ONLY TO THE EXTENT THAT THE COMPANY HAS MADE SUCH REPRESENTATIONS AND/OR AGREED TO PROVIDE SUCH ADVICE AND ASSISTANCE FOR A FEE UNDER A SEPARATELY WRITTEN CONTRACT WITH THE CUSTOMER.

- 9.3 All warranties, conditions and other terms implied by statute or common law (including without limitation any term as to satisfactory quality or fitness for purpose but save for the conditions implied by section 12 of the Sale of Goods Act 1979) are to the fullest extent permitted by law excluded from the Contract.
- 9.4 Nothing in these Conditions shall exclude or limit any liability of the Company, for death or personal injury caused by the Company's negligence, or under section 2(3), Consumer Protection Act 1987, or for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability, or for fraud or fraudulent misrepresentation.
- 9.5 Without prejudice to the warranty in Clause 7.1 above, the Customer's sole remedy shall be in damages.
- 9.6 Without prejudice to Clause 7.3 above, no action may be brought against the Company in connection with the Goods or the Contract unless proceedings are issued against the Company within 2 (two) years after the Customer became or ought to have become aware of the circumstances giving rise thereto.

## 10. DRAWINGS, PATENTS Etc

- 10.1 Where the Customer supplies any drawings, samples, models, designs or similar matters or articles for use by the Company in connection with the performance by the Company of any contract, the Customer hereby warrants that the same are its own unencumbered property and do not infringe any patent, copyright, registered design, trade mark or any other intellectual property right and that the same may be delivered to and used by the Company free from any contractual or other restrictions. The Customer shall indemnify the Company and keep the Company indemnified against all claims, demands, liability, costs and expenses (including the cost of investigating and defending any claim) which the Company shall incur arising directly or indirectly from any breach of such warranty.
- 10.2 The copyright and all other rights (whether in relation to patents, registered designs or similar matters) in any designs, drawings, models, samples, products or Goods produced by the Company for the Customer shall at all times remain with the Company and the Customer shall have no right or licence to or to sue any such right of the Company other than for the use the Goods supplied by the Company pursuant to the terms of any Contract with the Customer. The Customer shall not copy, manufacture or have manufactured, reproduce or purchase or otherwise source any of the Goods or items similar thereto from any person, firm or company other than the Company.
- 10.3 All specifications, plans, drawings, technical knowledge and other confidential information, whether of a technical or commercial nature which may be obtained by or come into the possession of the Customer from the Company shall not be used by the Customer other than for the purpose of the Contract and shall not be disclosed to any other person, company or firm whatsoever except where this is for the purposes of the Contract. Any such specifications, plans or drawings and reproductions thereof, shall be returned to the Company on demand.

## 11. RISK AND TITLE

- 11.1 The risk in the Goods shall pass to the Customer upon delivery ex-works or, where the Company has agreed to arrange physical delivery, upon delivery to the carrier or other form of carriage considered by the Company to be appropriate.



- 11.2 Title to the Goods shall only pass to the Customer when the Customer has paid to the Company in full in cleared funds all sums due or outstanding (including any interest) to the Company under the Contract and all other sums which are or which become due to the Company on any account from the Customer or any associate or subsidiary company of the Customer or any company under common control with the Customer.
- 11.3 Until title to the Goods has passed to the Customer, the Customer must:
- 11.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 11.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
- 11.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 11.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and
- 11.3.5 hold the proceeds of the insurance referred to in sub-clause 11.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 11.4 If the Goods in any way become incorporated into or fixed to other goods, the Customer will hold such other goods on trust for the Company as security for the payment in full of the price of the Goods and all other sums due to the Company from the Customer under the contract.
- 11.5 If the Customer sells the Goods before title has passed, then the Customer shall hold on trust for the Company all proceeds of the sale until such proceeds are paid to the Company in settlement of the sum due under the Contract.
- 11.6 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
- 11.6.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and
- 11.6.2 any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 11.7 The Customer's right to possession of and to resell the Goods shall terminate immediately if:
- 11.7.1 the Customer convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying

floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer;

11.7.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade;

11.7.3 the Customer encumbers or in any way charges any of the Goods; or

11.7.4 the Company has reasonable doubts as to the solvency of the Customer and so notifies the Customer in writing

11.8 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership has not passed from the Company.

11.9 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession or resale has terminated, to recover them.

11.10 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this Clause 11 shall remain in effect.

## **12. TERMINATION**

12.1 The Company may terminate the Contract with immediate effect by written notice to the Customer if the Customer:

12.1.1 is in breach any of the Conditions of the Contract and (if such breach is remediable) fails to remedy such breach within 14 days of being notified of the breach;

12.1.2 fails to pay any amount due to the Company within 7 days of the payment being due;

12.1.3 suffers any of the events referred to in Clause 11.7.

12.2 In the event of termination in accordance with Clause 11.1, the Company shall have no further obligation to perform under the Contract and all monies due to the Company under the Contract (including for part performance of any Contract) shall be payable by the Customer.

## **13. INSTALMENT CONTRACTS**

13.1 Where any Contract is to be performed by the Company in stages or by instalments each stage and each instalment shall be treated as a separate contract regulated by these Conditions and the times herein set out for the performance of any act shall relate to each stage and each instalment as if it were a separate contract.

13.2 Where payment is to be made to the Company by instalments, each instalment shall be treated as a balance due under a separate contract.

13.3 If any instalment of any payment in respect of any contract is in arrear the Company may at any time while such arrears continue withdraw from further performance until the same is paid together with interest in full up to the date and may commence proceedings to recover the same but this right shall be without prejudice to any other right of the Company under any one or more of the other Conditions herein.

#### 14. GENERAL

14.1 Any indulgence, forbearance or other concession by the Company to the Customer, shall not in any way constitute a waiver or otherwise prejudice the Company's rights under this Contract.

14.2 If any provision of these Conditions is held by any court in England and Wales to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

14.3 The Company shall have a general lien over all property of the Customer in the possession of the Company for all debts owing from the Customer.

14.4 The Company shall not be obliged to pay to the Customer any money credited to the Customer in the Company's books so long as the Company has any actual or prospective claim against the Customer.

14.5 Notices relating to the Goods or the Contract shall be in writing and may be delivered by hand or sent by prepaid mail or registered mail or facsimile to the Company or the Customer (as the case may be) at its registered office or principal place of business.

14.6 Unless the Company gives its express consent in writing, the Customer shall not assign, transfer, sublicense or subcontract to any third party all or any part of the benefit and/or burden of this Contract.

14.7 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.8 The Contract shall be governed by and construed and performed in accordance with the law of England. The Customer agrees, for the Company's exclusive benefit, that the English courts shall have sole jurisdiction to hear all claims or proceedings connected with the Goods or the Contract. The Company may nevertheless bring claims in any other courts of competent jurisdiction.