



GENERAL TERMS AND CONDITIONS OF SALE

Kalzip GmbH – October 2018

The Contract Documents constitute the entire agreement between the Buyer and the Seller regarding the Goods and the Services.

Definitions

"Acknowledgement of Order" means the acknowledgement of the Buyer's Order issued by the Seller;

"Advice and Support Services" means any advice or support which are not Design Services provided by the Seller to the Buyer or its agents in connection with the Goods;

"Buyer" means the person or business entity who purchases the Goods and/or the Services from the Seller and which is named in the Contract;

"Buyer's Order" means the Buyer's order for the Goods and Services submitted to the Seller as referred to in the Acknowledgement of Order;

"Buyer's Specification" means the specification or description of requirements in relation to the Goods and/or Services which is agreed in writing by the Buyer and the Seller and is referenced in the Acknowledgement of Order (or if none is acknowledged in the Acknowledgement of Order, that specification contained in the Buyer's Order);

"Conditions" means the general terms and conditions of sale set out in this document as amended from time to time in writing or in accordance with clause 1.1(d);

"Contract" means the contract between the Buyer and the Seller as constituted by the Contract Documents;

"Contract Documents" means the Conditions, the Acknowledgement of Order (including any other document referred to in the Acknowledgement of Order) and the Buyer's Specification;

"Cutting and Rolling Services" means the cutting or formation of the Goods by the Seller at the Delivery Location;

"Delivery Location" means, in the case of Goods, the location or locations set out in the Acknowledgement of Order or such other location as the parties may agree, to which Goods are to be delivered by the Seller or, where the Buyer is to collect the Goods from the Seller, means the Seller's premises (as the case may be), and in the case of Services means the location at which Services are to be performed;

"Design Services" means any design related advice and support including but without implying limitation the production of drawings, plans, elevations, calculations and/or solutions development services in connection with the Goods or any of the Seller's product range which has not been procured by the Buyer pursuant to this Contract, as further set out in the Acknowledgement of Order;

"Force Majeure Event" means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war or threat of war, acts of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental or parliamentary or local authority order, rule, regulation or direction, accident, power failure or breakdown of plant or machinery, fire, flood, storm, tempest, explosion, default of suppliers or subcontractors, import or export regulations or embargoes or difficulties in obtaining raw materials, labour, fuel, parts or machinery;

"Goods" means the goods (including any instalment of the goods or any part of them) set out in the Acknowledgement of Order;

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date of commencement of the Contract;

"Loading" means loading of the Goods onto a transportation vehicle at the Delivery Location (where the Buyer is collecting the Goods from the Seller at the Seller's premises);

"Return Longstop Date" means the longstop date for the return of the Seller's Materials by the Buyer as specified in the Order Acknowledgement or as otherwise specified by the Seller;

"Seller" means Kalzip GmbH, registered in Germany with the Commercial Register of the local court in Koblenz under HRB 3868;

"Seller's Policies and Procedures" means all policies and procedures adopted by the Seller at its premises (including but not limited to those in relation to health and safety);

"Seller's Materials" means all materials, equipment, documents and other property of the Seller; and

"Services" means any services to be supplied by the Seller to the Buyer pursuant to the Contract Documents which may include the Advice and Support Services and/or the Cutting and Rolling Services and/or the Design Services.

1. Entire Agreement and Basis of Contract

1.1 Entire Agreement

- (a) The Buyer acknowledges that the Contract, including these Conditions, is intended by the Seller and the Buyer to be a final expression and a full and complete statement of their agreement, and supersedes all prior contracts and negotiations between the Seller and the Buyer, whether oral or written. No representation of statement made by the Seller or any other person whether authorised or not may be relied upon by the Buyer or form a part of the Contract in respect of the Goods and/or Services unless such representation or statement is included in the Conditions.
- (b) The Buyer acknowledges that:
 - (i) the Seller's employees or agents are not authorised to make binding statements, promises or representations on behalf of the Seller; and
 - (ii) it has not relied on any statement, promise or representation made or given by or on behalf of the Seller, which is not set out expressly in the Contract.
- (c) No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used or defined in these Conditions. Acceptance or acquiescence in a course of performance rendered in accordance with the Contract shall not be relevant to determine the meaning of the Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.
- (d) No subsequent modification of the Conditions shall be effective unless confirmed in writing by the Seller. The Seller reserves the right to amend the Conditions from time to time. The Buyer shall be deemed to agree to the exclusive applicability of the Conditions, as amended, unless the Buyer objects to them in writing within seven days upon receipt of the amended Conditions, provided that the Seller explicitly advised the Buyer of the effect of the Buyer's silence upon the announcement of any amendment to the Conditions.
- (e) In the event the Contract is deemed or interpreted to be an "instalment contract", the delivery of nonconforming Goods or the nonconforming provision of Services, or a default of any nature, in relation to one or more instalments of this Contract will not substantially impair the value of the Contract as a whole and will not constitute a breach of the Contract as a whole.
- (f) Unless otherwise expressly agreed to in writing by the Seller, every sale by the Seller shall in every case be subject to the Conditions to the exclusion of any other terms whether contained in an earlier set of conditions issued by the Seller or in a form of order or any other document issued by the Buyer or otherwise arising whether expressly or by implication.
- (g) The terms and conditions of the Contract Documents shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- (h) Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods, which is not



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confirmed in writing by the Seller, is followed or acted upon entirely at the Buyer's own risk. The Seller shall not be liable for any advice or recommendation which is not confirmed in writing.

- (i) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- (j) Reference to a "day" is to a calendar day.

1.2 Basis of Contract

- (a) The Buyer's Order constitutes an offer by the Buyer to purchase the Goods and/or Services in accordance with the Contract.
- (b) The Buyer's Order shall only be accepted when (and shall not be deemed to be accepted before) the Seller issues written acceptance of the Buyer's Order by issuing an Acknowledgement of Order of at which point and on which date the Contract shall commence. Performance obligations under acceptance by the Seller shall become binding upon the Seller on the condition that:
 - (i) all required permits, consents and approvals, including any applicable import and export licenses, have been granted and obtained by the Buyer to the Seller's reasonable satisfaction; and
 - (ii) the Buyer delivers and the Seller receives an irrevocable letter of credit or bill of exchange in a form acceptable to the Seller or such other evidence in a form acceptable to the Seller, which will enable the Seller to obtain sufficient credit insurance or other payment guarantees in respect of the Buyer.

If either of the conditions referred to at (i) and (ii) above is not satisfied in full, the Buyer shall not be entitled to receive any performance from the Seller in respect of (and the Seller shall not be liable to perform) any of the Seller's obligations under or in connection with the Contract and (without prejudice to clause 17(l)), the Seller shall have no liability to the Buyer in respect thereof.

- (c) Any quotation given by the Seller shall not constitute an offer, and, unless otherwise agreed in writing, is only valid for a period of 30 days from its date of issue.
- (d) Any samples, data sheets, product specifications, drawings, descriptive matter or advertising issued by the Seller and any illustrations or descriptions of Goods or Services contained in the Seller's promotional materials are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. As such they are intended as guidance only and they shall not form part of the Contract or have any contractual force unless the Seller expressly consents to this in writing.

2. Buyer's Order, Buyer's Specifications and Standards

- (a) The Buyer shall be responsible to the Seller for ensuring the completeness and accuracy of the terms of the Buyer's Order and the Buyer's Specification and for providing the Seller with any relevant information it might require in order to supply the Goods and/or Services in accordance with the terms and conditions of the Contract Documents.
- (b) The Seller reserves the right to amend the Buyer's Specification, if required by any applicable standards, statutory or regulatory requirements, without the Buyer's written consent. Where the Seller wishes to make any amendments to the Buyer's Specification that will constitute technical improvements or will not materially affect the quality of the Goods and/or Services supplied, it shall obtain the Buyer's written consent prior to making such amendments but the Buyer shall not unreasonably refuse its consent thereto.
- (c) For the avoidance of doubt, all information from the Buyer, including the Buyer's Specifications and the Buyer's Order, shall be subject to the approval in writing of the Seller. All further specifications and other information required from the Buyer by the Seller, must be received by the time stipulated by the Seller and, if not so received, the Seller shall be entitled either to extend the time for delivery of the Goods or the provision of the Services,

for a reasonable period, or to terminate any deliveries not made by giving notice to the Buyer.

- (d) No part of the Contract may be cancelled by the Buyer except with the written agreement of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- (e) The Buyer shall be responsible for obtaining and maintaining all necessary licenses, permissions and consents and complying with all applicable laws and regulations in connection with the Contract.
- (f) To the extent that the Goods are manufactured in accordance with the Buyer's Specification, the Buyer agrees to indemnify and hold the Seller harmless from any and all claims, demands, proceedings and actions, which may be made or brought against the Seller by any person, including any purchaser of the Goods or any product made from the Goods, arising from the use of the Goods or any products in which the Goods are used, including, but not limited to, infringement of any Intellectual Property Rights, or from any latent or hidden defects in the quality of the Goods or resulting products, or from the dangerous condition thereof, and the Buyer shall pay any and all costs, fees (including reasonable lawyers' fees) and expenses, judgements, awards and fines for and on behalf of the Seller as incurred or as they become due.
- (g) All Products are manufactured to the Seller's internal tolerances (a copy of these is available on request).
- (h) It is the Buyer's responsibility to ensure that any structure that the Products are to be attached to is suitable for that purpose.

3. Price for Goods and Services

- (a) The price is payable in British pounds for supplies to countries using the British pound or Euro's for supplies to other countries unless otherwise stated. The price to be paid shall not be subject to any discount or reduction, except as agreed in writing by the Seller.
- (b) Except where otherwise agreed in writing, the price for the Goods is set out in the Seller's price list current at the date of delivery. Unless otherwise stated in such price list or quotation, the price shall include the costs of packaging.
- (c) The charges for Services shall be calculated on a time and materials basis in accordance with the Seller's standard fee rates. These standard fee rates assume that the Services will be carried out during standard working hours and the Seller shall be entitled to apply an additional overtime rate where Services are performed outside of the standard working hours. The overtime rate will be the prevailing rate, which applies at the time the overtime is incurred, and such rate will be made available to the Buyer on request.
- (d) The Seller shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Seller engages in connection with the Services (including travelling expenses, hotel costs, subsistence and any associated expenses) and for the cost of services provided by third parties and required by the Seller for the performance of the Services and for the cost of any materials.
- (e) Unless otherwise stated all prices and charges shall be exclusive of any applicable customs duties, value added tax, goods and services tax, excise duties, sales tax or levies of a similar tax, which the Buyer shall be additionally liable to pay to the Seller.
- (f) In the event that the Seller may produce an amount of material in excess of that amount actually ordered by the Buyer, to account for contingencies associated with the process of the Goods, and to cater to additional orders on demand, the Buyer shall be liable for any additional collection costs associated with such excess material.
- (g) The Seller reserves its right to:
 - (i) increase its standard fee rates for the charges for the Services by written notice to the Buyer at any time;
 - (ii) adjust from time to time the list price of any of the Goods to take account of increases in raw material or other costs in producing the Goods if delivery is requested by the



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Buyer more than three months following the commencement of the Contract. All prices are subject to cost factors facing the Seller at the time for delivery unless the Seller has explicitly confirmed to the Buyer that the price is a fixed price. If the cost for raw materials, energy, transportation and packaging materials increases materially either for the Seller or its suppliers, resulting in a material increase in purchase prices or cost prices, the Seller shall be entitled to demand negotiations on a price adjustment immediately; and/or

- (iii) immediately increase the price of the Goods by written notice to the Buyer at any time before delivery to reflect any increase in the cost of the Goods to the Seller that is due to any factor beyond the control of the Seller, any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered or any other matter set out in the Acknowledgement of Order or the Buyer's Specification, or any delay caused by instructions of the Buyer or failure by the Buyer to give the Seller complete and accurate information or instructions. For the avoidance of doubt, factors beyond the control of the Seller include, but are not limited to, material increases regarding the cost for raw materials, energy, and transportation and packaging materials for the Seller or its suppliers.

- (h) If an agreement cannot be reached within a reasonable time in respect of the matters in clause 3(g), the Seller shall be released from its obligation to effect any outstanding deliveries.

- (i) In the event that the Goods are stored with the Seller:

- (i) at the Buyer's request; or
(ii) on account of a delay in the delivery of such Goods caused by the Buyer;

the Buyer shall be liable to the Seller for any and all storage costs, including insurance.

- (j) Where the Seller charges the cost of pallets and returnable containers to the Buyer in addition to the price of the Goods, full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due date for payment.

4. Payment Terms

- (a) Unless otherwise agreed in writing between the Buyer and the Seller:

- (i) in respect of Goods, the Seller shall be entitled to invoice the Buyer on or at any time after delivery, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in either of which events the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods;

- (ii) in respect of Services, the Seller shall invoice the Buyer monthly in arrears, unless otherwise agreed in writing; and

- (iii) unless otherwise agreed in writing, the Buyer shall pay each invoice submitted by the Seller within 30 days of the date of the invoice ("Due Date") and in full and cleared funds to a bank account nominated in writing by the Seller.

- (b) Time for payment shall be of the essence of the Contract and the Buyer shall have an obligation to pay each invoice by its Due Date notwithstanding that delivery may not have taken place or that title and property in the Goods has not passed to the Buyer. Payments shall be deemed to have been made in due time only if actually received by the Seller or credited to the Seller's account without reservation on the Due Date.

- (c) Notwithstanding the payment terms set out in this clause 4, the Seller may require payment in advance before making any shipment, if the Buyer's credit shall, at any time, in the sole judgement of the Seller, become impaired. The total amount payable under the Contract shall become immediately due and payable and the Seller may cancel the unperformed portion of

the Contract upon the Buyer's failure to make payment when due.

- (d) The Buyer shall pay all amounts due under the Contract in full without deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any amount in whole or in part. The Seller may, without limiting its other rights and remedies, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

5. Seller's Remedies

Without prejudice to any other right or remedy available to the Seller, if the Buyer fails to make any payment due to the Seller under the Contract on its Due Date (whether for the Goods and/or Services referred to in the Acknowledgement of Order or for any other goods and/or services not forming part of the subject matter of the Contract) then the Seller shall be entitled to take any one or more of the following actions:

- (a) cancel the Contract or suspend delivery of the Goods (or collection of the Goods by the Buyer) and suspend provision of the Services;

- (b) appropriate any payment made by the Buyer in respect of the Goods and/or Services (or the goods and/or services supplied under any other Contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);

- (c) charge the Buyer interest on the overdue amount at the rate of two per cent per annum above the then current HSBC Bank plc's base lending rate accruing on a daily basis from the Due Date until the actual payment of the overdue amount, whether before or after judgement, and compounding quarterly;

- (d) suspend delivery to the Buyer or collection by the Buyer of any other Goods or suspend provision to the Buyer of any other Services (whether or not forming part of the subject matter of the present Contract) which the Seller has sold or provided or agreed to sell or provide to the Buyer; and/or

- (e) withhold shipment of any portion of the Goods covered by the Contract in the event the Buyer fails to make payment by the Due Date for prior shipments under the Contract. Such action on the part of the Seller shall not release the Buyer from its obligation to accept and pay for the remaining portion of the Goods if and when shipped by the Seller.

6. Taxes

The Buyer shall bear the burden of any new, additional or increased tax, public charge, freight, tariff or duty which may after the date of the commencement of the Contract be levied on or imposed upon the Contract, on the Goods to be sold and/or the Services to be provided, or upon any sale, delivery, or other action taken in accordance with this Contract, or upon the export or import of such Goods or materials required to produce the Goods or perform the Services.

7. Delivery

- (a) Where the Buyer has agreed to collect the Goods from the Seller:

- (i) the Buyer shall collect the Goods within five (5) days of the Seller notifying the Buyer that the Goods are ready for collection from the Delivery Location;

- (ii) delivery of the Goods shall be completed on commencement of Loading in accordance with clause 7(a)(iii); and

- (iii) the Seller shall load the Goods onto the Buyer's vehicle at the Delivery Location. The Buyer agrees to observe the loading of the Goods onto the Buyer's vehicle and the Buyer shall be solely responsible for securing the Goods to the Buyer's vehicle and ensuring that the Goods are safely and properly secured. The Seller is not liable for a failure by the Buyer to properly observe the loading of the Goods or the Buyer's failure to properly and safely secure the Goods to the Buyer's vehicle.

- (b) Where the Seller agrees to deliver the Goods to the Buyer, it shall deliver the Goods to the Delivery Location at any time after the Seller notifies the Buyer that the Goods are ready, and delivery of



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the Goods shall be completed on the Goods' arrival at the Delivery Location. The Buyer is responsible for the offloading of all Goods from the Seller's vehicle following delivery by the Seller.

- (c) Dates or periods quoted for delivery are approximate only and are given for information only and shall, under no circumstances, be essential terms. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Seller's obligation to deliver the Goods and provide any Services associated with this Contract shall be subject to the Seller having received its own supplier's delivery properly and when due. The parameters determined by the Seller prior to preparation for shipping of any Goods shall be determinative for all quantities, weights and measures of the delivery. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- (d) Unless otherwise specified, the Seller shall have the right to make partial deliveries. Each partial delivery or instalment of the Goods shall be deemed to be sold under a separate Contract containing all of the Conditions, and payment shall be due in accordance with clause 4. Any delay or failure by the Seller to deliver any one or more of the instalments in accordance with the Conditions or any defect in or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to cancel any other instalment or to treat the Contract as a whole as repudiated.
- (e) If a Force Majeure Event affects or is likely to affect delivery by the Seller, the Seller is entitled to suspend delivery to such a time as may be necessary to enable it to make delivery in the exercise of reasonable diligence after the causes of delay have been removed. If the manufacture or delivery of the Goods is still prevented or hindered at the end of a reasonable period, the Seller may terminate any deliveries not made by giving notice to the Buyer, and the Seller shall have no liability whatsoever to the Buyer in connection with any such deliveries not made.
- (f) If the Buyer fails to accept or does not accept delivery of or collect the Goods within five days of the Seller notifying the Buyer that the Goods are ready, then except where failure or delay is caused by a Force Majeure Event or by the Seller's failure to comply with its obligations under the Contract in respect of the Goods, delivery of the Goods shall be deemed to have been completed at 9.00 a.m. on the sixth day following the day on which the Seller notified the Buyer that the Goods were ready.
- (g) If twenty days after the Seller has notified the Buyer that the Goods were ready for delivery, the Buyer has not accepted or taken delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Buyer for any shortfall below the price of the Goods or (where the Buyer has paid the price of the Goods) may account to the Buyer for any excess over the price of the Goods under the Contract.
- (h) The Buyer shall not be entitled to reject the Goods if the Seller delivers up to and including 5 per cent of more or less the quantity of the Goods ordered, but a pro-rata adjustment shall be made to the Seller's invoice in respect of such Goods on receipt of notice from the Buyer that the wrong quantity of Goods was delivered.
- (i) The Seller's liability for any delay in delivery of the Goods shall be limited to the lower of:
- 10 per cent of the value of (i) the relevant delayed Goods or (ii) the total price payable for Goods and / or Services, whichever is lower;
 - five hundred thousand pounds (£500,000); or
 - such lower amount (if any) set out in the Acknowledgement of Order.
- (j) The Buyer may not assign any claims for delivery against Seller, neither in part nor entirely, to a third party. The Seller shall also not be required to effect any delivery to a third party at the behest of the Buyer.
8. Incoterms and Risk
- (a) Unless otherwise agreed in writing between the Buyer and the Seller, risk in the Goods shall pass in accordance with the relevant Incoterm set out in the Acknowledgement of Order, or if none is set out in the Acknowledgement of Order, the 2010 Cost,

Insurance and Freight Incoterms 2010 published by the International Chamber of Commerce.

- (b) Where there is any conflict between the Incoterm specified in the Acknowledgement of Order and these Conditions in relation to the passing of risk, the relevant Incoterm will take precedence (but otherwise, these Conditions shall take precedence over the Incoterms).

9. Claims for Loss or Damage in Shipment by Seller

In the event of delivery of the Goods by the Seller to the Buyer, no claims respecting loss or damage to the Goods while in transit shall be recognised unless notice is given by the Buyer to the Seller as follows:

- (a) in the case of non delivery of all the Goods, if the Buyer gives written notice to the Seller at its address and/or the Seller's agent at the place where the loss is discovered within three days after the date on which the Goods should have been delivered; and
- (b) if the Seller fails to deliver the Goods, its liability shall be limited to the reasonable costs and expenses incurred by the Buyer in obtaining replacement Goods of a similar description and quality in the cheapest market available, less the price of the Goods.

10. Export Sales

- (a) Where the Goods are supplied for export, the provisions of this clause 10 shall apply (subject to any special terms agreed in writing between the Buyer and the Seller) notwithstanding any other provision of these Conditions.
- (b) The Buyer shall be responsible for complying with any legislation or regulations governing the exportation of the Goods into the country of destination, as well as the importation of the Goods into that country, and for the payment of any taxes or duties associated with such exportation and importation. For the avoidance of doubt, the Buyer must present to the Seller all necessary permits, approvals or other such documentation required in connection with the importation and exportation of the Goods.
- (c) In the event that the Seller is responsible for complying with any legislation or regulations for the importation and exportation of the Goods to the country of destination, the Seller will not be liable to the Buyer for any costs, expenses or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's inability, for any reason whatsoever, to obtain any necessary certificate, permits, approvals or other such documentation associated with the importation and exportation of the Goods.

11. Inspection

- (a) The Buyer shall be responsible for arranging for the testing and inspection of the Goods (and notifying of any issue) including in respect of, but not limited to, completeness of Goods, loss of Goods, quality and defects within 24 hours of the date on which risk in the Goods passes to the Buyer (save that when the Goods are delivered at the Seller's premises such inspection, testing and notification shall take place prior to loading). That inspection shall be final. The Seller shall have no liability for any claim in respect of any defect in the Goods, which should have been apparent on such inspection or testing but which is discovered or reported after such time limit.
- (b) Any and all inspections by the Buyer shall be at the Buyer's sole cost and expense.
- (c) The Buyer shall not return any of the Goods to the Seller nor shall the Buyer withhold payment or deduct the cost of the alleged defective Goods or any part thereof without the Seller's express written consent.
- (d) The Buyer's failure to inspect and/or notify the Seller as provided above shall be deemed to be a waiver of any and all rights and remedies that the Buyer may have with regard to any defect or non-conformity regarding the Goods except for any latent defect which would not have been discoverable upon reasonable inspection.



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- 12 Title
- (a) Notwithstanding delivery and the passing of risk in the Goods, or any other provisions of these Conditions, legal and beneficial title to the Goods shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for:
- (i) the Goods; and
- (ii) any other goods that the Seller has supplied to the Buyer in respect of which payment has become due.
- (b) Until such time as title to the Goods has passed to the Buyer, the Buyer shall:
- (i) hold the Goods on a fiduciary basis as the Seller's bailee;
- (ii) store the Goods separately from all other goods held by the Buyer and clearly mark them so that they remain readily identifiable as the Seller's property;
- (iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (iv) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Seller's behalf from the date of delivery;
- (v) notify the Seller immediately if it becomes subject to any of the events listed in clause 18(a)(ii)-(x);
- (vi) give the Seller such information relating to the Goods as the Seller may require from time to time; and
- (vii) allow the Seller access to the location at which the Goods are stored to enable it to check that the Buyer's obligations under clauses 12(b)(iii)-(vi) have been complied with;
- but (unless payment for the Goods or for any other goods supplied by the Seller to the Buyer is overdue) the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.
- (c) If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 18(a)(ii)-(x), or the Seller reasonably believes that such events are about to happen and notifies the Buyer accordingly, then, provided the Goods have not been resold or irrevocably incorporated into another product:
- (i) The Buyer's permission to use or resell the Goods shall be revoked; and
- (ii) The Seller shall be entitled (without limitation to any other right or remedy the Seller may have) to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so promptly, to enter any premises of the Buyer or of any third party where the Goods are stored in order to recover or repossess them.
- (d) The Seller shall be entitled to transfer title in the Goods to the Buyer at any time by giving written notice to the Buyer.
13. Supply of Services
- (a) The Seller shall use reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- (b) The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.
- (c) Where the Seller provides Cutting and Rolling Services:
- (i) such services shall be provided at the Delivery Location and shall be limited to the cutting or formation of the Goods in accordance with the Buyer's instructions;
- (ii) the Buyer shall provide its own labour for the handling of the Goods other than as outlined in clause 13(c)(i), the Buyer shall be responsible for the safe offloading and reloading of the Goods from the Seller's vehicles at the Delivery Location;
- (iii) the Seller or its employees or representatives shall not be required to supervise or assist in any other way in the mounting or construction of the Goods and shall have no liability whatsoever in relation thereto;
- (iv) the Buyer shall be responsible for ensuring that all health and safety regulations are complied with and shall be liable for any personal injury to such of the Seller's employees, agents or representatives as may be engaged in connection with the provision of such services;
- (v) the Buyer shall ensure that any Seller's Materials, including but not limited to any roll forming machines, used in connection with such services are treated with care, protected from theft and damage and are generally maintained in good condition until they are returned to the Seller, and the Buyer shall be responsible for all costs and expenses of replacing the Seller's Materials due to theft and repairing any damage caused to such Seller's Materials whilst they are at the Delivery Location; and
- (vi) neither the Seller nor any of its employees, agents or representatives operating any roll forming equipment shall have any responsibility or liability whatsoever (to the maximum extent permitted by law) for the proper, appropriate and safe processing of the Goods (other than caused by the negligence of the Seller or its employees, agents or representatives) and the Seller shall be only responsible for the actual operation of such roll forming machines and following the Buyer's instructions.
- (d) Where the Seller provides Design Services and/or Advice and Support Services, the Buyer acknowledges and accepts that:
- (i) the Buyer and/or its employees, agents, consultants or sub-contractors shall be fully responsible for ensuring that all necessary permits and approvals are obtained in relation thereto;
- (ii) the Seller shall not be responsible for the contents of any design documents, specifications or other documents provided by the Buyer (including, but without any limitation, any previously issued design documents), or for verifying the accuracy of any designs contained in them; and
- (iii) subject to clause 13(g)(iii) below, all Intellectual Property Rights in or arising out of or in connection with Design Services and/or Advice and Support Services performed by the Seller (or on the Seller's behalf) shall be owned by the Seller. All drawings, specifications and other documents provided by the Seller remain the Seller's property and shall not be copied, disclosed to any third party, or otherwise used without the Seller's prior written consent and shall be returned to the Seller without undue delay upon request.
- (e) Where the Seller has leased any of the Seller's Materials to the Buyer, including but not limited to zipping machines or lifting beams, the Buyer shall ensure that such Seller's Materials are treated with care, protected from theft and damage and are generally maintained in good condition until they are returned to the Seller and the Buyer shall be responsible for all costs and expenses of replacing the Seller's Materials due to theft and repairing any damage caused to such Seller's Materials whilst in the Buyer's possession. The Buyer must also ensure that its employees, contractors and agents, who are the intended operators of the leased Seller's Materials are knowledgeable and competent in their use of such Seller's Materials.
- (f) For the avoidance of doubt, the Seller will not be responsible or liable for delays in providing the Seller's Materials, where such a delay is a result of a Force Majeure Event, transportation, documentation, unknown faults, site delays or a lack of competence on the part of the Buyer, its employees,



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contractors or agents in respect of the use of any leased Seller's Materials.

- (g) Where the Seller provides Design Services and/or Advice and Support Services:
- (i) the Seller shall not be responsible for any incorrect information provided by the Buyer or advice due to error or lack of knowledge or information in any materials provided by the Buyer to the Seller or for the contents of any design documents, specifications or other documents provided by or on behalf of the Buyer or for verifying the accuracy of any designs contained within them;
 - (ii) any advice or recommendation given by the Seller, its employees or agents to the Buyer or the Buyer's employees or agents shall be (or later confirmed) in writing by the Seller. Insofar as any such advice or recommendation is not confirmed in writing by the Seller, it is followed or acted upon entirely at the Buyer's own risk. The Seller shall not be liable for any advice or recommendation which is not confirmed in writing;
 - (iii) subject always to payment in full for the Design Services and Advice and Support Services provided pursuant to this Contract and subject to clause 15, the Seller grants to the Buyer a non-exclusive license to use the drawings, specifications and other documents provided as part of the those services for any purpose related to the project to which those services relate, but excluding any extension of the project, or other works not comprised in that project. The Seller shall not be liable for any use by the Buyer, or the Buyer's nominees, of any such documents for any purposes other than those for which they were originally prepared by the Seller;
 - (iv) the Seller shall exercise all of the reasonable skill and care in the provision thereof as would be expected of an architect or other professional designer experienced in carrying out services similar to the Design Services and/or Advice and Support Services and all warranties, conditions and other terms express or implied by statute or common law without limitation, including but not limited to implied warranties of fitness for a particular purpose and all warranties otherwise arising by operation of law, course or dealing, custom of trade or otherwise, are to the fullest extent permitted by law, excluded;
 - (v) the performance by the Seller of any Design Services and/or Advice and Support Services in connection with the project is personal to the Seller and may not be relied upon by any other person;
 - (vi) if the Seller would (but for this clause) become liable to the Buyer hereunder for any amount in respect of any breach of this Contract in respect of the Design Services and/or Advice and Support Services and the Seller is prevented from recovering from any person any contribution towards that amount by reason of the Buyer not having obtained from such person contractual commitments similar to those contained in this Contract (*mutatis mutandis*) or by reason of such person having ceased to exist or ceased to be able to meet his obligations, the Seller shall be liable hereunder for such amount less the contribution which the Seller would otherwise have been entitled to seek to recover from such person.
For the purposes of this clause 13(g)(vi) the word "person" means any person engaged by or on behalf of the Buyer for any purpose connected with the design and/or construction of the project.

14. Buyer's Obligations

- (a) The Buyer shall:
- (i) ensure that the terms of the Acknowledgement of Order and Buyer's Specification are complete and accurate;
 - (ii) ensure that, where the Buyer supplied patterns, drawings, samples, equipment or materials ("Buyer's Materials") for the production of the Goods or the provision of Services or as part of the Buyer's Specification, the Buyer's Materials are accurate, in good

condition, true to drawings and entirely suitable to the methods of production of the Seller or the Seller's supplier and for the production of the Goods in the quantities required or for the provision of the Services. The Seller is not responsible for the accuracy of the Buyer's Materials. Any quotation of the Seller given in accordance with clause 1.2(c), is made on the assumptions set out in this clause 14(a)(ii) and the Buyer shall consult the Seller when new Buyer's Materials are to be generated.

- (iii) be responsible for the replacement of or alterations or repairs to the Buyer's Materials due to normal wear and tear, which render their condition unsuitable for satisfactory production of the Goods or the provision of Services;
- (iv) co-operate with the Seller in all matters relating to the Goods and the Services;
- (v) provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities (or, where such premises are not under the control of the Buyer, it shall procure access for the Seller) as reasonably required by the Seller to provide the Goods and the Services;
- (vi) provide the Seller with such information and materials as the Seller may reasonably require to supply the Goods and the Services, and ensure that such information is accurate in all material respects;
- (vii) other than where the Delivery Location is the Seller's premises, prepare the Delivery Location for the supply of the Goods and the Services;
- (viii) obtain and maintain all necessary permits, licenses, approvals, permissions and consents of any kind, which may be required for or in connection with the Goods and/or the Services, including but not limited to, the instalment of the Goods or the planning or construction of the site at which the Goods are to be installed or at which the Services are to be undertaken, before the date on which the Services are to commence or the Goods are to be delivered. The Buyer must comply with and continue to comply with all applicable laws, rules and regulations in connection with the Goods and the Services, including, but not limited to accepted practices as to the import, export, transport, storage, handling, use and disposal of the Goods;
- (ix) keep and maintain all Seller's Materials at the Delivery Location (or such other location as has been agreed with the Seller) in safe custody at its own risk, maintain the Seller's Materials in good condition until returned to the Seller, and not dispose of or use the Seller's Materials other than in accordance with the Seller's written instructions or authorisation (and shall allow the Seller access to any site (and, where such premises are not under the control of the Buyer, it shall procure access for the Seller) to inspect the Seller's Materials) and will obtain all necessary documents and authorisations from the Buyer's customers to release the Seller's Materials as agreed; and
- (x) if the Buyer should fail to return the Seller's Materials in accordance with clause 14(a)(ix), the Buyer shall without prejudice to any other rights or remedies of the Seller, whether at common law, in contract or otherwise, upon demand pay to the Seller liquidated damages at the rate set out in the Acknowledgement of Order for the period between the Return Longstop Date and the date that such Seller's Materials and any deliverables which have not been fully paid for are returned and received by the Seller. Where no amount of liquidated damages is specified in the Acknowledgement of Order, the default rate shall be £500 per day. The Buyer acknowledges that such liquidated damages are to compensate the Seller for losses resulting from the late return of such Seller's Materials and any deliverables which have not been fully paid for. Should the recovery of liquidated damages be invalid or otherwise unenforceable or if no rate is inserted,



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then the Buyer shall be liable to the Seller for general damages for the actual costs and losses incurred by the Seller as a result of any failure of the Buyer to return the Seller's Materials in accordance with 14(a)(ix). The Buyer shall not be liable for liquidated damages or general damages pursuant to this Clause 14(a)(x) where and to the extent that any failure to return the Seller's Materials in accordance with 14(a)(ix) is due to any breach of this Contract, or other act of prevention by the Seller.

- (b) If the Seller's performance of any of its obligations in respect of the Goods or the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("Buyer Default"), in addition to the Seller being entitled to all legal and equitable remedies:

- (i) the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
- (ii) the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 14; and
- (iii) the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.

- (c) By placing the Buyer's Order, the Buyer confirms that it has in place appropriate codes, policies and procedures similar to the Seller's Policies and Procedures. The Buyer must also become familiar with the product information provided by the Seller from time to time, and sufficiently instruct its employees, contractors, agencies and customers as to the proper handling of the Goods. The Buyer confirms that its employees, contractors and agents are competent in the handling of the Goods and in respect of the installation of the Goods.

- (d) For the avoidance of doubt, where the Buyer resells any Goods, the Buyer shall be responsible for ensuring that all applicable laws and regulations in relation to the packaging and labelling of the Goods are complied with and that the resold Goods conform to any description given to them by the Buyer, to its customers.

15. Intellectual Property

All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Seller. The Buyer acknowledges that in respect of any third party Intellectual Property Rights in the Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Seller obtaining a written license from the relevant licensor on such terms as will entitle the Seller to license such rights to the Buyer.

16. Confidentiality

- (a) Subject to clause 13(g)(iii), all drawings and specifications submitted to the Buyer as part of the Design Services and/or the Advice and Support Services remain the Seller's property and shall not be copied, disclosed to any third party, or otherwise used without the Seller's written consent.

- (b) The Buyer agrees (on behalf of itself and its subsidiaries and related companies, employees, sub-contractors and agents) that it will keep confidential and will not disclose or divulge any confidential, proprietary or secret information, including but not limited to all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and any other confidential information concerning the Seller's business or its products or services, which the Buyer (or any of its subsidiaries and related companies, employees, sub-contractors and agents) may obtain from the Seller in connection with this Contract, and which the Seller has prominently marked as "confidential", "proprietary" or "secret" or has otherwise identified as confidential, unless such information is or becomes publicly known, or unless the Seller gives its written consent to the Buyer to release such information. The Buyer shall restrict disclosure of such confidential information

to such of its employees, agents or subcontractors as need to know for the purpose of discharging its obligations under the Contract and shall ensure that they are subject to confidentiality obligations in relation to such information.

- (c) The Seller is permitted to disclose confidential information of the Buyer to its subsidiaries and related companies and shall ensure that such employees, agents or subcontractors of the relevant affiliated company or companies are subject to the same obligations of confidentiality as expected of the Buyer in clause 16(b), as if that clause referred to the Seller and its affiliated and related companies.

- (d) This clause shall survive termination of the Contract.

17. Warranties and Limitations of the Buyer's Remedies

- (a) The Seller warrants that on delivery the Goods shall conform in all material respects with the Buyer's Specification at the time of completion of delivery and will be free from material defects in material and workmanship for a period of 12 months from completion of delivery.

- (b) Where the Seller may provide Cutting and Rolling Services to the Buyer, it warrants to the Buyer that that service will be provided using reasonable care and skill.

- (c) The Seller shall not be liable for the Goods' failure to comply with the warranty in clause 17(a), the Cutting and Rolling Services failure to comply with the warranty in clause 17(b) or the failure of the Seller to comply with clause 13 (g) (iv) if:

- (i) the Buyer makes any further use of such Goods or the product which results from the Cutting and Rolling Services ("Products") after giving a notice in accordance with clause 17(d);

- (ii) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or Products or (if there are none) good trade practice;

- (iii) the defect arises as a result of the Seller following the Buyer's Specification;

- (iv) the Buyer alters or repairs such Goods or Products without the written consent of the Seller;

- (v) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

- (vi) the Goods or Products differ from the Buyer's Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or

- (vii) the total price for the Goods or the Cutting and Rolling Service has not been paid by the due date for payment.

- (d) Subject to clause 17(c), if:

- (i) The Buyer gives the Seller notice in writing within seven days of delivery of the Goods or the provision of the Services (or, where discovery of non-compliance with the warranties is not possible upon reasonable inspection of the Goods by the Buyer upon delivery, within seven days of discovery thereof) that some or all of the Goods, Products or Services do not comply with the warranties set out in clause 17(a) and clause 17(b) or the provisions of clause 13 (g) (iv);

- (ii) The Seller is given a reasonable opportunity of examining such Goods and Products; and

- (iii) In respect of Goods, the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost;



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- the Seller shall, at its option, repair or replace the defective Goods or Products or refund the price of the defective Goods or Products in full.
- (e) Except as expressly provided in clause 17(c) and clause 17(d), the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 17(a).
- (f) The Seller shall have no liability to the Buyer in respect of the Services, except as expressly provided in clause 17(c) and clause 17(d), for that Service's failure to comply with the warranty set out in clause 17(b) or the provisions of clause 13 (g) (iv).
- (g) The Seller shall not be liable for any interruption, disruption or delay in manufacture or delivery of Goods due to or arising out of, the inability of the computer related systems of the Seller's suppliers and/or customers to process, provide or receive data correctly.
- (h) The Seller will use its best endeavours to ensure that all reasonable care is taken of the Buyer's Materials while in the Seller's or its supplier's possession but no liability is accepted for loss or damage arising from a Force Majeure Event, theft or deterioration and no insurance will be effected in respect of patterns or materials lodged with the Seller or its supplier from which the Buyer has not required Goods to be made for a period of 12 months or more.
- (i) Where the Seller delivers any additional goods or materials that have been manufactured by third parties (including, but not limited to, any screws, plastic clips or panels to be used in connection with the installation of the Goods) ("Third Party Materials"), in no event shall the Seller's liability for any defect, malfunction or other failure of Third Party Materials exceed the manufacturer's liability in respect of those materials. It shall be the sole responsibility of the Buyer to comply with all guidelines, handbooks or instructions of any kind provided to the Buyer relating to the installation, use and continued operation of Third Party Materials.
- (j) The Conditions shall apply to any repaired or replacement Goods or Products supplied by the Seller under clause 17(d).
- (k) Subject to clauses 7(i) and 17(n), the Seller's liability to the Buyer or to any party claiming through or on behalf of the Buyer, with respect to any claim or loss arising out of this Contract or alleged to have resulted from an act or omission of the Seller's negligence or otherwise, including failure to deliver, delay in delivery, or breach of warranty, shall be limited to an amount equal to the purchase price of the Goods and/or the Services or Products paid for by the Buyer to the Seller less the fair market value of the Goods and/or Products in the Buyer's possession and/or the Services provided by the Seller with respect to which such liability is claimed or, where appropriate and at the option of Seller, replacement of the Goods and/or Products or replacement and pick up of the Goods and/or Products.
- (l) Nothing in these Conditions shall limit or exclude the Seller's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, fraud or fraudulent misrepresentation, breach of any of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or breach of the terms of section 12 of the Sale of Goods Act 1979 (title and quiet possession) or any other liability that cannot be excluded or limited by virtue of any mandatory rule of law that applies to this Contract and the services and other obligations undertaken by the Seller pursuant to them. Otherwise, all limitations and exclusions of liability set out in this Contract are intended to and shall apply to the fullest extent permitted by law.
- (m) In no event shall the Seller be liable to the Buyer or any other person for:
- i) loss of profit, loss of revenue, loss or contracts (in each case whether direct or indirect); or
- ii) any consequential or incidental or economic damages, losses or expenses, direct or indirect, arising out of or in connection with this Contract.
- If the Seller would (but for this Clause) become liable to the Buyer hereunder for any amount in respect of any breach of this Contract in respect of any survey or reporting services and the Seller is prevented from recovering from any person any contribution towards that amount by reason of the Buyer having not obtained from such person contractual commitments similar to those contained herein (mutatis mutandis) or by reason of such person having ceased to exist or ceased to be able to meet his obligations, the Seller shall be liable hereunder for such amount less the contribution which the Seller would otherwise have been entitled to seek to recover from such person.
- For the purposes of this Clause, "person" means any person engaged by or on behalf of the Buyer or for any reason connected with the purpose of this Contract.
- No action regardless of form, arising out of or in connection with this Contract may be brought by the Buyer more than one year after the cause of action has accrued.
- (n) The Seller's total liability to the Buyer in respect of all and any losses arising under or in connection with the Contract, whether in contract, tort (including negligence) breach of statutory duty, or otherwise shall in no event exceed the lower of:
- (i) the total price of the Goods and/or Services;
- (ii) the maximum amount of five million pounds; or
- (iii) such lower amount (if any) set out in the Acknowledgement of Order.
- (o) Except as set out in these Conditions, all warranties, conditions and other terms express or implied by statute or common law without limitation, including but not limited to implied warranties of merchantability and fitness for a particular purpose and all warranties otherwise arising by operation of law, course or dealing, custom of trade or otherwise, are to the fullest extent permitted by law, excluded from the Contract.
- (p) 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 failure to perform its obligations under the Contract if such delay or failure was the result of a Force Majeure Event. If the Force Majeure Event prevents the Seller from providing any of the Services and/or Goods for more than 12 weeks, the Seller shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.
- (q) The Buyer shall not be entitled to withhold payment of any amount payable under the Contract to the Seller because of any disputed claim of the Buyer nor shall the Buyer be entitled to set-off against any amount payable under the Contract to the Seller any monies which are not presently payable by the Seller or for which the Seller disputes liability.
- (r) This clause 17 shall survive termination of the Contract.
18. Termination
- (a) Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (i) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
- (ii) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;



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- (iii) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (iv) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
 - (v) the other party (being an individual) is the subject of a bankruptcy petition or order;
 - (vi) A creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (vii) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - (viii) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (ix) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (x) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 18(a)(ii)-(ix) (inclusive);
 - (xi) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
 - (xii) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- (b) Without limiting its other rights or remedies, the Seller may terminate the Contract:
- (i) by giving the Buyer one month's written notice; or
 - (ii) with immediate effect by giving written notice to the Buyer, if the Buyer fails to pay any amount due under this Contract on its due date.
- (c) Without limiting its other rights or remedies, the Seller shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 18(a)(ii) - (x), or the Seller reasonably believes that the Buyer is about to become subject to any of them.
- (d) On termination of the Contract for any reason:
- (i) the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
- (ii) the Buyer shall return all of the Seller's Materials and any deliverables which have not been fully paid for. If the Buyer fails to do so, then the Seller may enter the Buyer's premises (or any premises on which the Seller's Materials are held (and, where such premises are not under the control of the Buyer, it shall procure access for the Seller)) and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and
 - (iii) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- (e) Clauses which expressly or by implication have effect after termination shall continue in full force and effect.
19. General
- (a) Notice
- Any notice or other material communication required to be given to a party in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid post, to its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number or by email to the relevant person of the other party. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid post at 9.00 am on the third day after posting, or if sent by fax or email, on the next business day (that is not a weekend or bank or public holiday in the country of the receiving party) after transmission. This clause shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall include e-mails but for the avoidance of doubt notice given under this Contract shall be validly served if sent by e-mail.
- (b) Waiver
- A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.
- (c) Assignment
- The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party. The Buyer shall not, without the prior written consent of the Seller, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (d) Partial Invalidity
- If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- (e) No partnership or joint venture
- Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another



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party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

- (f) Notwithstanding paragraph (e) above, if an order is taken by an affiliate or group company of the Seller (including but not limited to Kalzip Limited), that affiliate or group company will be acting as the Seller's agent and the Contract will be made direct between the Buyer and the Seller.

- (g) Privity of contract

A person who is not a party to the Contract shall not have any rights under or in connection with it.

- (h) Disputes

Any dispute which may arise between the parties concerning the Contract may with the agreement of all relevant parties be submitted for resolution using alternative dispute resolution techniques including without limitation such techniques as conciliation and mediation. If such techniques are considered by the parties to be appropriate to resolve the dispute they shall consult the Centre for Dispute Resolution to advise upon the most appropriate procedure. Without prejudice to the foregoing, the parties shall be entitled to elect to refer any dispute for final settlement by arbitration in which case:

- (i) the arbitration will be governed by and conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce;
- (ii) by one or more arbitrators appointed in accordance with the said Rules (and the Buyer shall consent to such election); and
- (iii) the arbitration shall take place in London or Manchester and shall be conducted in English.

- (i) Applicable Law and jurisdiction

The Contract shall be governed by and construed in accordance with the laws of England and Wales (unless otherwise stated in the Acknowledgement of Order).

- (j) Local laws and international standards

Without prejudice to clause 19(i) above:

- (i) the Buyer shall comply with all the relevant labour laws applicable to the Buyer's personnel, including laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights;
- (ii) the Buyer's personnel at site have to obey all the safety rules and other rules at site and in the country;
- (iii) no work shall be carried out on the Site on locally recognised days of rest, or outside of normal working hours; and
- (iv) the Buyer shall at all times take all reasonable precautions to maintain the health and safety of the Seller's personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for the Seller's personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

Last Updated: October 2018