

# TRADE TERMS AND CONDITIONS

NDI are part of the Grafton Group who take pride in being a responsible and ethical business.

## STANDARD TERMS AND CONDITIONS OF SALE

These Terms & Conditions relate to trade sales only and not consumer sales.

These terms apply to all contracts which any customer enters into with Grafton Merchanting GB Limited (No.4725313) wholly or mainly for the purposes of its trade, craft, business or profession. Separate terms apply to consumer sales and the statutory rights of a Customer who is a Consumer are not affected by these Conditions.

All Customers should print out and keep a copy of these terms and your order/order confirmation for future reference.

The Customer's attention is specifically drawn to Conditions 6(j), 10 and 11

## 1. INTERPRETATION

### A. IN THESE CONDITIONS:

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business. "Company" means Grafton Merchanting GB Limited (Company No.4725313); "Conditions" means these commercial terms and conditions of sale; "Customer" means the person or firm purchasing the Goods from the Company; "Contract" means the contract for the sale of the Goods made between the Company and the Customer in accordance with these Conditions, "Force Majeure Event" means an event or circumstance beyond a party's reasonable control. "Goods" means the goods and materials and any part of them (including samples, where relevant) which are the subject of the Contract. "Specification" means any specification for the Goods, including any related plans and drawings that is agreed by the Customer and the Company.

### B. INTERPRETATION:

(a) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted. (b) Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms. (c) A reference to writing or written includes emails.

## 2. THE CONTRACT/ORDER ACCEPTANCE

(a) These Conditions shall apply to the Contract and to all orders placed to and accepted by the Company to the exclusion of any other terms and conditions which the Customer Seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

(b) No variation to these Conditions shall be binding without the express written agreement of a director of the Company

(c) Any order submitted by the Customer to the Company shall constitute an offer to contract on these Conditions. Even if the Company has given a quotation and/or estimate, no order placed by the Customer is binding on the Company until it has been accepted by the Company.

(d) In placing an order with the Company the Customer and its representatives warrant and represent that each of them has the necessary authority to bind the Customer in contract.

(e) The Customer is solely responsible for ensuring that the terms of its order and any applicable specification are complete and accurate.

(f) The Customer's order for Goods will be deemed to be accepted when the Company issues a written acceptance of the Order, at which point, the Contract in accordance with these Conditions shall come into existence.

(g) The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

(h) The Company reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

### **3. ESTIMATES/QUOTATIONS**

Please note: All Estimations and Quotations are valid for a maximum period of 30 days.

(a) The Customer is entirely responsible for ascertaining the quantities it requires notwithstanding that an estimate or quotation may have been given by the Company.

(b) Quotations or estimates provided to the Customer by the Company are for the supply of Goods on these Conditions only. Any quotation or estimate provided to the Customer by the Company is not an offer and the Company reserves the right to withdraw or amend any quotation at any time before the Company's acceptance of the Customer's order.

(c) Where fine or specific tolerances are required in Goods beyond those generally accepted in the building trade no liability will attach to the Company unless the tolerances are notified in writing to the Company at the time the Customer provides its order to the Company and the Company has agreed in writing to supply Goods that meet those tolerances.

(d) The Company may without notice to the Customer reasonably alter any specification, description, design, drawing, illustration and/or other particulars relating to the Goods and to supply the Goods as so altered in performance of the Contract and may also substitute and supply similar goods of equivalent type in the performance of the Contract, provided that any alteration or substitution does not significantly reduce or change the substantive quality and/or nature of the Goods.

## 4. RETURNS/CANCELLATIONS

(a) If the Customer incorrectly orders any Goods or otherwise wishes to terminate the contract for convenience the Company may, in its sole discretion, determine whether or not to accept the return of the Goods/termination. The acceptance by the Company of returned Goods shall be on such terms as it may determine and in particular the Company may charge for the carriage and handling of such Goods at the greater of 25% of their invoiced value or £5.

(b) An order for Goods that are to be specially made or obtained (“Specials”) may not be cancelled for convenience by the Customer once the order has been accepted by the Company nor will any allowance be made in respect of Specials if they are subsequently returned.

## 5. PRICES

(a) The price of the Goods (“the Price”) shall be the price quoted by the Company to the Customer provided the Customer accepts the quotation within 30 days of its date and a quotation or estimate shall only be valid for 30 days. Where no price has been quoted (or a quoted price is no longer valid) the Price shall be the Company’s trade price on the date the Goods are delivered.

(b) The Company may, by giving notice to the Customer at any time up to 7 days before delivery or collection of the Goods, increase the Price to reflect any increase in the cost to the Company of procuring or supplying the Goods which is due to factors beyond its reasonable control (including without limitation foreign exchange fluctuations, taxes and duties and the cost of labour, materials and manufacturing costs); in such circumstances the Customer may cancel the Contract provided that they do so not later than 3 days before the due date for delivery.

(c) All prices quoted are exclusive of Value Added Tax and delivery charges unless otherwise stated.

(d) If the Customer orders Goods to be collected in accordance with Condition 7(a)(i) but then changes its mind to request delivery to a Delivery Location, the Company may charge the Customer a reasonable fee for delivery plus a reasonable administration fee.

## 6. ACCOUNTS/PAYMENTS

(a) Credit accounts may be opened at the discretion of the Company, subject to satisfactory credit references being obtained. Unless otherwise agreed in writing, payment for Goods supplied on credit accounts shall become due and payable no later

than the last day of the month following the month of delivery. However if the Goods concerned are Specials the Company may instead apply the payment terms in Condition 6(b).

(b) For cash Customers, that is, Customers who do not have a credit account with the Company or whose credit account is cancelled or suspended under Condition 6(g) and in respect of the supply of Specials to credit account Customers and other non-standard transactions (as determined by the Company), the Customer shall pay the price for the Goods on acceptance of order, or on or before delivery, (where applicable), upon receipt of the Company's invoice.

(c) No payment shall be deemed to have been received until the Company has received cash or cleared funds. Time for payment shall be of the essence. Notwithstanding any other provision, all payments payable to the Company under any Contract shall become due immediately if the Company becomes entitled to terminate the Contract under Condition 16(a) or the Contract otherwise terminates.

(d) Any queries on an invoice must be raised in writing by the Customer within 21 days of the invoice date, otherwise the invoiced amount shall be deemed to be accepted by the Customer.

(e) Without prejudice to the Company's rights to enforce payment, if the Customer fails to make payment in accordance with these Conditions the Company is entitled to seek interest on any overdue balance outstanding pursuant to its rights under the Late Payment of Commercial Debts (Interest) Act 1998, or (at the Company's absolute discretion) to charge interest on any overdue balance outstanding (notwithstanding that a portion of the account or invoice is the subject of any dispute or query) from the due date for payment until payment is made, whether before or after any judgment) at the annual rate of 5% above the base lending rate from time to time of the Bank of England.

(f) The Customer shall indemnify the Company, against all costs (including legal costs) and expenses incurred by the Company in recovering amounts due from the Customer, or exercising its rights under this Condition 6, including any administration fee incurred if the Company refers a late/non payment dispute to its lawyers or collection agents.

(g) The Company may cancel or suspend the Customer's credit account by notice in writing at any time should it decide, for whatever reason, that it requires further security from the Customer, other than that already provided (if any). If the Company exercises such rights it may continue trading with the Customer in accordance with Condition 6(b). The Company may reinstate the credit account once the additional security required has been provided by the Customer and any other conditions have been met. The Customer agrees to use its best endeavours to ensure that any additional security required by the Company (including but not limited to a third party guarantee) is provided.

(h) The Company may at any time, at its sole discretion and without reference to the Customer or any guarantor: (i) increase (without limit) or decrease any credit limit applied to the Customer; and (ii) supply Goods in excess of the credit limit.

(I) The Company may take action to collect all monies owing in full whether or not the sums due exceed the prevailing credit limit.

(j) Where more than one invoice is outstanding the Company may choose against which invoice(s) to apply any payment from the Customer even if the Customer has allocated the payment to a specific invoice.

(k) The Customer shall give the Company prior written notice, which acknowledges service, of any change in its constitution or ownership or, in the case of a sole trader or partnership, if it wishes to incorporate or merge with others. The Company may then decide whether to exercise its rights in Condition 6(g) to continue trading with the Customer, whether a new credit application is required and whether to continue with any credit arrangements granted to the Customer and shall not be obliged to continue with either unless a written confirmation and acceptance is issued by an authorised member of the Company's credit management team, a Company director or the Company Secretary.

(l) If a cheque used by the Customer to pay an account is dishonoured the Company may debit the Customer's account with any charge or cost incurred by the Company as a consequence. If the Company accepts payment by credit card it may levy a surcharge at its standard rates in force at the time of payment.

(m) On termination of the Contract, howsoever caused, the Company's rights contained in this Condition 6 shall remain in effect.

## **7. DELIVERY/DESPATCH**

(a) Delivery of the Goods shall be made: (i) by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection; or (ii) if some other place for delivery ("Delivery location") is agreed between the Customer and the Company, by the Company delivering the Goods to that place at any time after the Company has notified the Customer that the Goods are ready.

(b) Risk of damage to or loss of the Goods shall pass to the Customer: (i) in the case of Goods to be collected from the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection; (ii) in the case of Goods to be delivered to the Delivery Location, on delivery to the Delivery Locations; and (iii) if the Customer fails to take delivery of the Goods, at the time when the Company has tendered delivery of the Goods.

(c) If Goods are delivered to the Delivery Location: (i) the Company accepts no liability whatsoever for any loss of or damage to the Goods whilst in transit unless it is notified in writing with the details of the damage within 7 days of delivery; (ii) the Customer shall provide the Company with such access to its premises as the Company requires in order to deliver the Goods and shall provide the labour and equipment required to complete the delivery; (iv) the Company may charge the Customer for any return visits made as a result of the Customer's failure to take delivery of the Goods; (v) delivery is completed on the completion of unloading of the Goods at the Delivery Location or as near as possible to the Delivery Location as is safe and the public highway permits.

(d) Any stated time or date for delivery is an estimate only and is not binding on the Company. The time and date of delivery is not of the essence and the Company shall not be liable for any failure to deliver by such time or date, nor for any loss or damage arising directly or indirectly from such failure. The Customer may not refuse to accept Goods because of late delivery; nor, where Goods are to be delivered in instalments, shall the Company's failure to deliver any instalments by any time or date entitle the Customer to treat the Contract as a whole as repudiated.

(e) If the Customer fails to take delivery of Goods or to give the Company adequate instruction for delivery then, without prejudice to its other rights, the Company may: (i) store the Goods until actual delivery and charge the Customer for the costs (including insurance) of storage; or (ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for any excess over the Price or charge the Customer for any shortfall against the Price.

(f) Where delivery is to be made by instalments, each instalment shall be deemed to be a separate and distinct contract and no default by the Company in respect of any one or more instalment shall entitle the Customer to reject or withhold payment in respect of any other instalment.

(g) The Company shall provide evidence (such as a delivery note) of the delivery of Goods supplied in response to a request from the Customer provided it is received within 3 months of the delivery date. If the Customer does not raise any query about delivery within such period, the Goods concerned shall be deemed to have been delivered in accordance with the Contract.

(h) The Company does not accept liability for shortages in quantities delivered unless the Customer notifies the Company of any claim for short delivery of the Goods within 2 days of the delivery to the Customer. In such circumstances the Company's liability shall be restricted to making good the shortage. Any delivery book or note marked "NOT EXAMINED" will not prevent the operation of these clauses nor constitute express or implied notice in writing of any potential or actual shortage.

(i) If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

(j) The Customer must provide the Company with an address for delivery if it does not intend to collect the Goods, along with all of the information which the Company reasonably requires to enable it to determine whether it will be able to deliver the Goods, the appropriate method of delivery and the cost to the Customer of providing the delivery service.

(k) The Customer is responsible for any additional lifting once delivery has been completed.

## 8. PERFORMANCE

The Customer is responsible for ensuring that: (i) the Goods are sufficiently suitable and fit for the purpose intended and comply with all applicable requirements whether statutory, regulatory, municipal or otherwise; (ii) its premises are safe and suitable for the delivery, installation, use and operation of the Goods and comply both before and after such delivery, installation and during such operation with all relevant legislation (including without limitation safety legislation); (iii) any item of equipment provided by it which relates to the installation or operation of the Goods or is ancillary to or is for use in connection with the Goods shall not adversely affect their suitability or fitness for purpose.

## 9. WARRANTY

(a) Subject to Condition 10(a) the Company agrees (in its discretion) to repair (if possible), replace free of charge or refund any sums paid by the Customer for any Goods which in the reasonable opinion of the Company are defective due to a manufacturing fault but only if: (i) such fault is notified to the Company in writing within 7 days of delivery; and (ii) the Company and/or its representative is given a reasonable opportunity after receiving the notice of examining such Goods in situ or the Customer (if asked to do so by the Company) returns such Goods to the Company, at such address specified by the Company, for the examination to take place there.

(b) The Company shall not be liable for a breach of the warranty in Condition 9(a) if: (i) the Customer makes any further use of such Goods after giving notice of a defect; or (ii) the defect arises because the Customer failed to follow the Company's or the manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or (iii) the Customer alters or repairs such Goods without the written consent of the Company.

(c) The Company is not responsible either for the cost of removing or re-installing any repaired or replacement Goods, unless previously agreed in writing by a Company director.

(d) Any defective Goods or parts thereof replaced by the Company in accordance with this Condition or otherwise shall become, or remain, the property of the Company.

(e) Where the Company is not the manufacturer of the Goods, the Company will endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

## 10. LIABILITY

(a) Nothing in these terms shall be deemed to exclude or restrict the Company's liability for: (i) death or personal injury resulting from its negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any breach on its part of the terms implied by Section 12 of the Sale of Goods Act 1979 (as amended) or defective products under the Consumer

Protection Act 1987 or any matter in respect of which it would be unlawful for the Company to exclude or restrict liability

(b) Subject to Condition 10(a), the Company's total aggregate liability under or in connection with the Contract (howsoever such liability arises, whether in contract or tort or otherwise, including for negligence) shall be limited to the value of the Goods supplied under the Contract.

(c) Subject to Condition 10(a), the Company shall not be liable (howsoever such liability arises, whether in contract or tort or otherwise, including for negligence) for any indirect or consequential loss or for damage to or for loss of profit, business, savings, production or goodwill which arises out of or in connection with the Contract.

(d) The Customer shall indemnify the Company from and against all loss, damage, or liability suffered or incurred by the Company or any third person for or arising out of the negligence, breach of statutory duty, breach of contract or other duty of the Customer or its officers, employees, agents or contractors, in each case in the course of performance of or otherwise in any way arising out of or in connection with the Contract.

(e) These Conditions set out the Company's entire liability in respect of the Goods and rights granted under them are in lieu and to the exclusion of all other warranties, conditions and other terms express or implied by statute, common law or a course of business except for any which cannot legally be excluded.

(f) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## **11. MISREPRESENTATION**

(a) The Company shall not be liable in respect of any misrepresentation made by the Company its servants or agents to the Customer its servants or agents as to the condition of the Goods, their fitness for any purpose or as to quantity or measurements unless the representation is made or confirmed in writing by the Company and/or is fraudulent.

(b) Without prejudice to Condition 11(a), whilst the Company takes every precaution in the preparation of its catalogues technical circular price lists and other literature, these documents are for the Customer's general guidance only and statements made in them (in the absence of fraud on the part of the Company) shall not constitute representations by the Company and the Company shall not be bound by them.

## **12. OWNERSHIP**

(a) The risk in the Goods shall pass to the Customer on completion of delivery

(b) Unless the Company agrees otherwise in writing, title to the goods shall not pass to the Customer until the earlier of (i) The Company receives payment in full (in cash or

cleared funds) for the Goods and all other sums which are due to the Company from the Customer, in which case title to the Goods shall pass at the time of payment of all such sums and (ii) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in Condition 12(c). (b) Until title to the Goods has passed to the Customer, the Customer shall (i) store the Goods (at no cost to the Company) separately from all other goods held by the Customer or any third party so that they remain readily identifiable as the Company's property (ii) not remove, deface or obscure any identifying mark, serial number or packaging on or relating to the Goods (iii) maintain the Goods in satisfactory condition and keep them insured against all risks for their full Price from the date of delivery, providing the Company with a copy of the insurance policy upon request (iv) notify the Company immediately if it becomes subject to any of the events listed in Condition 16(b) or it seeks to encumber or in any way charges any of the Goods; and (v) give the Company such information relating to the Goods as the Company may require from time to time.

(c) Subject to Condition 12(d) the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time: (i) it does so as principal and not as the Company's agent; and (ii) title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.

(d) If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in Condition 16(b), then, without limiting any other right or remedy the Company may have (i) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and (ii) the Company may at any time require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **13. SIZES AND WEIGHTS ETC.**

(a) All sizes stated by the Company or a manufacturer are subject to dimensional tolerances in accordance with the appropriate BSS.

(b) The Company may deliver to the Customer an excess and/or deficiency of up to 10% of the weight or volume it agrees to deliver without any liability to the Customer and in such circumstances the Price payable by the Customer may be adjusted accordingly.

## **14. PALLETS AND PACKAGING**

(a) The Company may charge for any packaging provided on a time and materials basis. Charges levied by the Company for crates, cases, pallets or aggregate bags will be credited if reusable items in good condition are returned to the Company carriage paid within 28 days of delivery. Polythene sacks are nonreturnable.

(b) The Customer is solely responsible for the disposal of any waste arising from the Goods once delivered and will comply with all applicable laws, regulations and waste management licences relating to such waste.

## **15. FORCE MAJEURE**

The Company may defer the date of delivery or cancel the Contract or reduce the volume of Goods ordered by the Customer (without liability) if it is prevented from or delayed in performing due to Force Majeure Event including, without limitation, acts of God, governmental actions, war or national emergency, 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 materials.

## **16. DEFAULT AND TERMINATION**

(a) The Company may, without prejudice to or limiting its other rights and remedies, stop any Goods in transit and/or suspend further deliveries and/or by notice in writing to the Customer terminate the Contract with immediate effect, if (i) the Customer becomes insolvent (ii) if the Customer fails to pay any amount due under the Contract on the due date for payment or (iii) the Customer commits any other a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;.

(b) For the purposes of Condition 16(a) "insolvent" means the Customer becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, the levying of the threat of execution or distress on any property of the Customer, the appointment of a receiver or administrative receiver over all or any part of the Customer's property or assets, a proposal for a voluntary arrangement or compromise between the Customer or its creditors whether pursuant to the Insolvency Act 1986 or otherwise, being wound up by order of the court, the passing of a resolution of voluntary winding-up or summoning a meeting to pass such a resolution other than for the purposes of a bona fide, solvent amalgamation or reconstruction, the presentation of a petition for the winding-up of the Customer or an administration order in relation to the Customer, the Customer taking any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), the Customer ceasing or threatening to cease to carry on all or a substantial part of its business or the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

(c) If the Company is entitled to terminate the Contract under Condition 16(a) the Company may, without prejudice to its other rights: (i) in the case of any sale involving more than one delivery forthwith suspend any further deliveries; (ii) demand immediate payment of all sums then payable by the Customer regardless of whether the Customer is in default of the contract under which such sums are payable, including such sums not yet due.

## **17. PATENT AND TRADE MARKS**

(a) No representation is made or warranty given that any Goods supplied do not infringe any letters patent, trademarks, registered designs, or similar industrial or intellectual property rights.

(b) The Customer will unconditionally fully and effectively indemnify the Company against all liabilities, losses, damages, costs, expenses and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered and/or awarded against and/or incurred by the Company in connection with or paid or agreed to be paid by the Company as a consequence of, arising out of or in connection with the Company's use of the Specification and/or supplying Goods to Specification or designs provided by or on behalf of the Customer, including in settlement of any claim for infringement of any patents, copyright, design, trademark or any other industrial or intellectual property rights of any other person. This Clause 16(b) shall survive termination of the Contract.

## **18. NOTICES**

Any notice under or in connection with the Contract shall be in writing and shall be deemed properly delivered if addressed to the party concerned at its principal place of business or last known address and sent by first class pre-paid post. Such notice shall be deemed to be delivered 48 hours after posting. Notices may not be given by email.

## **19. DISPUTES AND SET-OFF**

Any liability of the Company under the Contract shall be subject to and conditional upon the due performance and observance by the Customer of all its obligations under these Conditions and the Customer may not withhold or delay payment or exercise any rights of set-off whatsoever and howsoever arising which might otherwise be available to it.

## **20. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **21. HEALTH & SAFETY**

Certain Goods could, if incorrectly used, give rise to risks to health and safety. Information in respect of such Goods is available from the Company. The Customer shall ensure compliance so far as is reasonably practicable by its employees, agents, licensees and customers with any instructions given by the Company or the manufacturer for the purpose of ensuring that the Goods are safe and without risk to health when properly used and will take any other steps or precautions, having regard to the nature of the

Goods, as are reasonably necessary to preserve the health and safety of persons handling, using or disposing of them.

## **22. SEVERABILITY**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

## **23. HEADINGS**

The headings in these Conditions are for convenience only and shall not affect their interpretation.

## **24. GOVERNING LAW AND JURISDICTION**

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

(b) Subject to Condition 24(c) each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

(c) the Company shall, in its acceptance of the Customer's order, be entitled to elect that the Contract shall be governed by and construed in accordance with Scottish law and/or that all disputes arising in connection with the Contract shall be submitted to the exclusive or non-exclusive jurisdiction of the Scottish Courts .

## **25. CREDIT SEARCH**

The Company will make a search with a Credit Reference Agency, who will keep a record of that search and will share the information with the Company and other businesses. In some instances the Company may also make a search on the personal credit file of principal directors. The Company may also pass or share Customer information with carefully selected third parties for the purposes of account opening, credit vetting and account management. Should it become necessary to review an account, then again a credit reference may be sought and a record kept. The Company will monitor and record information relating to Customer trade performance and such records will be available to Credit References Agencies who will share that information with other businesses when assessing applications for credit and fraud prevention. For the purposes of credit referencing the Company may also share information with other businesses.

## 26. ASSIGNMENT

(a) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

(b) The Company may assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

## 27. NO RIGHTS TO THIRD PARTIES

No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

## 28. DATA PROTECTION

The Company will only use the personal information provided to it by the Customer as set out in the Company's Privacy Policy. The Company's Privacy policy can be found on its websites or by writing to our Data Protection Officer at Grafton Group plc, Boundary House, 2 Wythall Green Way, Wythall, Birmingham B47 6LW or by emailing [DPO@graftonplc.com](mailto:DPO@graftonplc.com)

## STANDARD GUARANTEE TERMS:

(a) Where any person(s) ("the Guarantor") enter(s) into this Guarantee Agreement (Guarantee), these Standard Guarantee Terms shall apply.

(b) In these Standard Guarantee Terms "Guaranteed Obligations" means all monies, debts and liabilities of any nature from time to time due, owing or incurred by the Customer to the Company including those under or in connection with any present or future credit facilities (including any increase in credit limit) provided by the Company to the Customer.

(c) This Guarantee shall at all times be a continuing security and shall cover the ultimate balance from time to time owing to the Company by the Customer in respect of the Guaranteed Obligations

(e) the liability of the Guarantor under this Guarantee shall not be reduced, discharged or otherwise adversely affected by (i) any act, omission, matter or thing which would not have discharged or affected the liability of the Guarantor had it been a principal obligor instead of a guarantor; or (ii) any other act or omission except an express written release by deed of the Guarantor by the Company.

(f) The Company shall not be obliged, before enforcing any of its rights/remedies under this Guarantee, to take any action against the Customer/another person

(g) This Guarantee is in addition to and shall not affect/be affected by or merge with any other judgment, Security, right or remedy obtained or held by the Company from time to time for the discharge/performance of the Company of the Guaranteed Obligations

(h) The Guarantor may terminate this Guarantee by giving 3 months written notice to the Company (I) Notwithstanding any valid notice of termination, the liability of the Guarantor under this agreement shall continue in full force and effect in relation to all Guaranteed Obligations which (i) have become due on/before the Termination Date; and (ii) may become due, owing or incurred by the Customer to the Company before, on or after the Termination Date under any commitment, expressed or implied, assumed or undertaken by the Company to the Customer before the Termination Date.

(m) The Guarantor as principal obligor and as a separate and independent obligation and liability agrees to indemnify and keep indemnified the Company (and its successors, transferees and assigns) in full and on demand from and against all and any losses, costs (including legal costs), claims, liabilities, damages, demands and expenses suffered or incurred by the Company arising out of, or in connection with, the Guaranteed Obligations becoming irrecoverable for any reason or any failure of the Customer to perform or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations.

(n) The Company (and its successors, transferees and assigns) may at any time assign, transfer or deal in any other manner with any or all of its rights under this deed.

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