

1. Definitions

1.1 In these Conditions the following words have the following meanings:

"Business Day" means a day other than a Saturday, Sunday or bank or public holiday when banks in England are open for non-automated business.

"Buyer" the person who purchases the Goods from the Company, whose details are set out in the Order and whose Order for the Goods is accepted by the Company on the Conditions.

"Company" Jack Pennington Limited, registered in England and Wales, at Hird Street, Shipley, Bradford, West Yorkshire with company number 1168331.

"Conditions" the standard terms and conditions of sale set out in this document (as amended from time to time) and including any special terms and conditions agreed in writing between the Buyer and the Company.

"Contract" the contract between the Company and the Buyer for the purchase and sale of the Goods in accordance with these Conditions.

"Goods" the goods (including any installments of the goods or any part of them) which the Company is to supply to the Buyer in accordance with these Conditions.

"Order" the Buyer's order for the Goods in a form accepted by the Company.

1.2 Any reference to any provision of a statute is a reference to that provision as amended, re enacted or extended.

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

1.4 A reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.5 A reference to writing or written includes emails.

2. Basis of the Contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms and conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions.

2.3 The Order shall only be deemed to be accepted when the Company issues a written acknowledgement of the Order, or otherwise delivers the Goods (whichever is soonest), at which point the Contract shall come into existence.

2.4 Any offer placed orally by the Buyer must be confirmed in writing to the Company if the Company so requests.

2.5 Any quotation for the Goods given by the Company shall not constitute an offer capable of acceptance by the Buyer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

2.6 No variation to these Conditions shall be binding unless agreed in writing and expressed as such between the Buyer and the Company.

2.7 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.8 Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's sales literature, brochures or price lists are illustrative only and do not form part of the Contract, nor have any contractual force.

3. Orders and specifications

3.1 The Buyer shall be responsible to the Company for ensuring that the terms of any Order (including any applicable specifications) submitted by the Buyer are complete and accurate, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.2 The quantity, quality and description of and any specification for the Goods shall be as set out in the Company's quotation, or otherwise as agreed in writing by the Company.

3.3 The Company reserves the right to make any changes to the specification of the Goods where such change is required to conform with any applicable safety or other statutory requirement or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance. Nothing however shall prevent the Company from varying the specification of the goods it offers for purchase as it shall determine and the Company gives no assurance that particular goods will be available at any time.

3.4 No Order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on the terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

3.5 The Company reserves the right to counter any offer made by the Buyer in order to accommodate any price fluctuations as per clause 4.1 below. If such counter offer is not stated as acceptable to the Buyer within 24 hours of receipt by the Buyer of such counter-offer, the Order will lapse unless accepted by the conduct of the Buyer. Where the Buyer confirms in accordance with this clause 3.5 that such counter-offer is acceptable to it, the Contract shall however be formed in accordance with clause 2.3.

4. Price of the Goods

4.1 The price of the Goods shall be the price set out in the Company's acknowledgement of the Buyer's Order or in the absence of an acknowledgement, as per the Company's quotation or, where no price has been quoted or a quoted price is no longer valid, the current price set out in the Company's price list at the date of acceptance of the Order by the Company in accordance with clause 2.3 (the Price).

4.2 All prices quoted are valid for 30 days only after which time, the relevant Price of the Goods will be calculated by reference to the Company's current price list.

4.3 The Price is exclusive of any applicable Value Added Tax, which the Buyer shall be additionally liable to pay to the Company.

4.4 The Company reserves the right to charge:

4.4.1 a minimum price per Order of £5 or such higher price as the Company shall from time to time determine; and/or

4.4.2 a minimum line charge of £2.00, or such higher price as the Company shall from time to time notify to the Buyer per individual unit of Goods sold.

5. Terms of payment

5.1 The Company shall invoice the Buyer for the Goods at any time.

5.2 Unless otherwise expressly agreed in writing, the Buyer shall pay the Price of the Goods in full without deduction or set-off, within 30 days of the date of the Company's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the Price shall be of the essence. Receipts for payment will be issued only upon request.

5.3 The Company reserves the right to vary its payment terms in respect of any particular Buyer at any time including so as to require advance payment, and nothing in these

Conditions or the Contract shall oblige the Company to grant any credit, or continue to grant any credit.

5.4 If the Buyer fails to make any payment in full by the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

5.4.1 cancel the Contract or suspend any further deliveries to the Buyer; and/or

5.4.2 cancel any other contract in place between the Buyer and the Company and suspend any deliveries thereunder; and/or

5.4.3 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and/or

5.4.4 charge the Buyer interest (whether before or after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above National Westminster Bank Plc base rate from time to time in force where such interest shall accrue on a daily basis and apply from the due date for payment until payment in full is made.

5.5 The Buyer's obligation to pay the Price of the Goods under this Contract shall not be affected by any insolvency or similar event suffered, or other financial difficulties, of the Buyer or of any of its customers or other third parties with which it contracts.

6. Delivery

6.1 An Order shall specify whether the Goods are to be:

6.1.1 delivered by the Company to the location set out in the Order or such other location as the parties may agree (Delivery Location), in which case, delivery is completed on the completion of unloading of the Goods at the Delivery Location; or

6.1.2 made available for collection by the Buyer, or an agent authorised by the Buyer, from the Company's premises as set out in the Order, in which case delivery is completed when the Company makes the Goods available for collection at such premises; and reference to delivery in this clause 6 shall be interpreted according to the arrangements in clause 6.1.1 or 6.1.2 as the case may be. In the absence of any delivery location specified in an Order, delivery shall be in accordance with clause 6.1.2.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the stated delivery date upon giving reasonable notice to the Buyer.

6.3 Where delivery of the Goods is to be made by the Company in bulk, the Company reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity in the Order without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered in accordance with the terms of the Contract. The Buyer shall not be entitled to reject any delivery on the basis of an incorrect volume of Goods being supplied which are within these tolerances.

6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 The Company shall not be liable for any delay in or failure of delivery caused by the Buyer's failure to make the Delivery Location available or failure to provide adequate delivery instructions or in the case of a collection by the Buyer, a failure by the Buyer to collect the Goods.

6.6 If the Company fails to deliver the Goods for any reason, the Company's liability shall be limited to the excess (if any) by which the cost the Buyer incurs (in the cheapest available market) in obtaining similar goods to replace those not delivered, exceeds the Price of the Goods.

6.7 If the Buyer fails to take delivery of the Goods within 5 Business Days of the due date for delivery (otherwise than by reason of under clause 10 or the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:

6.7.1 store the Goods pending delivery in which case the Buyer shall pay the reasonable costs of storage and insurance; and/or

6.7.2 sell the Goods at the best price immediately obtainable and (after deducting all reasonable storage and selling expenses), in the event that the Buyer has paid the Price in full, account to the Buyer for the excess over the Price under the Contract or charge the Buyer for any shortfall below the Price under the Contract.

7. Risk and Title

7.1 Risk in the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, upon delivery of the Goods to the Delivery Location, including:

7.1.2.1 where neither the Buyer, nor any of his employees, agents or subcontractors are present to accept the delivery; or

7.1.2.2 in the case of the Buyer wrongfully failing to take delivery of the Goods, at the time when the Company has attempted delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Conditions, title to the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full for the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.

7.3 Until such time as title to the Goods passes to the Buyer, the Buyer shall:

7.3.1 hold the Goods as the Company's fiduciary agent and bailee;

7.3.2 store the Goods separately from all other material in the Buyer's possession, not mix the Goods and shall identify the Goods as the Company's property;

7.3.3 take reasonable care of the Goods and properly store and protect the Goods;

7.3.4 insure the Goods from the date of delivery (i) with a reputable insurer, (ii) against all risks, (iii) for an amount at least equal to the Price, (iv) noting the Company's interest on the policy; and

7.3.5 not remove or alter any mark on or packaging of the Goods.

7.4 Notwithstanding clause 7.3 the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.5 If the Buyer resells the Goods in accordance with clause 7.4, title to the Goods shall pass to the Buyer immediately prior to the resale.

7.6 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party (with or without vehicles) where the Goods are stored and repossess the Goods.

7.7 Where the Goods are stored on the premises of a third party, the Buyer shall procure the right for the Company to enter onto that third-party premises in accordance with clause 7.6.

7.8 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness of any of the Goods which remain the property of the Company, but if the Buyer

does so all monies owing by the Buyer to the Company (without prejudice to any other rights or remedy of the Company) forthwith become due and payable.

8. Warranties and liability

8.1 Except as set out in this clause 8, the Company gives no warranties and makes no representations in relation to the Goods.

8.2 All warranties and conditions (including the conditions implied by ss13-15 of the Sale of Goods Act 1979) whether express or implied by statute, common law or otherwise are excluded to the fullest extent permitted by law.

8.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification or, without prejudice to clause 6.3 hereof, any discrepancy as to the quantity of the Goods shall (whether or not delivery is refused by the Buyer) be notified to the Company within 7 days from the date of delivery or (where the defect, failure or discrepancy was not apparent on reasonable inspection) within a reasonable time after discovery of the defect, failure or discrepancy. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect, failure or discrepancy, and the Buyer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.

8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the Price of the Goods (or a proportionate part of the Price), but the Company shall have no further liability to the Buyer.

8.5 The Company shall not be liable for any such claim for a defect or failure of the Goods in respect of clause 8.3:

8.5.1 where such failure or defect arises due to wear and tear, wilful damage, negligence or could be expected to arise in the normal course of use of the Goods; and/or

8.5.2 to the extent caused by the Buyer's failure to comply with the Company's instructions in relation to the Goods; and/or

8.5.3 where the Buyer uses any of the Goods after notifying the Company that they are defective or fail to meet specification.

8.6 Subject to clause 6.3, where any valid claim in respect of any of the Goods which is based on a discrepancy as to the quantity of the Goods delivered is notified to the Company, the Company shall be entitled:

8.6.1 in the case of an under delivery to deliver the outstanding balance of the Goods ordered within a reasonable period; or

8.6.2 in the case of an over delivery to collect the Goods in excess of the amount ordered.

9. Limitation of liability - THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

9.1 Notwithstanding any other provision of the Contract, the liability of the Company shall not be limited in any way in respect of death or personal injury caused by the Company's negligence (or the negligence of the Company's employees, agents or subcontractors), fraud or fraudulent misrepresentation, or any other losses which cannot be excluded or limited by applicable law.

9.2 Subject at all times to clause 9.1, and whether or not the Company has been advised of the possibility of such a loss and whether or not such a loss was reasonably foreseeable, the Company shall not be liable in contract, tort (including negligence), for breach of statutory duty, or otherwise howsoever arising for any claim (including without limitation a claim pursuant to an indemnity), damage, loss, costs or liability in respect of:

9.2.1 any direct loss of profit;

9.2.2 any direct loss of anticipated savings;

9.2.3 any direct loss of use of money;

9.2.4 any direct loss of business;

9.2.5 any loss of business or contracts whether direct or indirect; or

9.2.6 any indirect loss or damage howsoever caused including (without limitation):

9.2.6.1 any indirect loss of profit;

9.2.6.2 loss of anticipated profit including loss of profit on contracts;

9.2.6.3 loss of use of money;

9.2.6.4 loss of anticipated savings;

9.2.6.5 loss of opportunity;

9.2.6.6 loss of goodwill; and/or

9.2.6.7 loss of reputation,

and the parties hereto agree that the sub clauses of this clause 9.2 shall be distinct and severable.

9.3 Subject to clause 9.1, the Company's total liability under or in connection with each Contract whether in contract, tort (including negligence) for breach of statutory duty or otherwise howsoever arising shall not exceed a sum equal to the Price of the Goods paid under that Contract.

10. Force majeure

10.1 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay or failure to deliver the Goods or if it is prevented from performing its obligations if the delay, failure or prevention was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control (the Force Majeure Event):

10.1.1 Act of God;

10.1.2 explosion, flood, storm, fire or accident;

10.1.3 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

10.1.4 acts, restrictions, regulations, bye laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

10.1.5 import or export regulations or embargoes;

10.1.6 strikes, lock outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

10.1.7 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

10.1.8 power failure or breakdown in machinery.

10.2 The Company shall notify the Buyer of the Force Majeure Event and its expected duration.

10.3 If due to the Force Majeure Event, three months after the Buyer receives the Company's notice the Company continues to be unable to, or delayed in performing a material obligation, then either party may by written notice, cancel the Contract in which event the Company will refund any payment made on account (subject to deduction of any amount the Company is entitled to claim from the Buyer) but will not be liable to compensate the Buyer for any further loss or damage caused by the failure to deliver.

11. Termination

11.1 The Company may terminate the Contract at any time by giving notice to the Buyer if:

11.1.1 the Buyer commits a material breach of the Contract;

11.1.2 the Buyer fails to pay any amount due under the Contract on the due date in accordance with clause 5.2; or

11.1.3 any of the following events occur (an "Insolvency Event"):

11.1.3.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or has a petition presented against it, or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

11.1.3.2 the Buyer has a petition presented to any court for its winding up or administration, or a winding up resolution is passed, or an application is made for an administration order, or any winding up or administration order is made against it; or

11.1.3.3 an encumbrancer takes possession, or a receiver, manager, administrator or administrative receiver is appointed; or

11.1.3.4 the Buyer ceases, or threatens to cease, to carry on business; or

11.1.3.5 the Buyer is unable to pay its debts as they fall due (being a company) within the meaning of section 123 Insolvency Act 1986, or (being an individual) within the meaning of section 268 Insolvency Act 1986; or

11.1.3.6 the Company reasonably apprehends that any event mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

11.2 If an Insolvency Event occurs then, without prejudice to any other right or remedy available to the Company, the Company shall also be entitled to cancel the Contract or suspend any further deliveries under the Contract (or any other contract) without any liability to the Buyer, and if the Goods have been delivered but not paid for, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. General

12.1 Any notice required or permitted to be given by either party to the other under the Contract shall be in writing, signed by or on behalf of the party giving it (except for notices sent by email) and addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notices may be given, and will be deemed received:

12.1.1 by first-class post: two Business Days after posting;

12.1.2 by hand: on delivery;

12.1.3 by email: at the time of transmission.

12.2 No failure or delay by the Company to exercise any right or remedy provided under the Contract or in law shall constitute a waiver by the Company 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.

12.3 The parties agree that the Contract constitutes the entire agreement between them with respect to its subject matter and supercedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

12.4 If any provision of the Contract is held by any competent authority to be invalid, illegal or unenforceable in whole or in part 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 of it) shall be deemed deleted. The validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

12.5 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.

12.6 The Contract and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with the laws of England and Wales. All disputes arising in connection with the Contract shall be submitted to the jurisdiction of the English Court.

12.7 The Buyer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Company's prior written consent.

12.8 Except as expressly provided elsewhere in this Contract, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

12.9 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.