



## FOREST GARDEN LTD TERMS AND CONDITIONS OF SALE

### 1 Definitions

In these Conditions the following expressions shall (unless the context otherwise requires) have the following meanings:

“**Company**” means Forest Garden Ltd (Registered in England No. 6023453) whose Registered office is at Units 291 & 296 Hartlebury Trading Estate, Hartlebury, Kidderminster, Worcs. DY10 4JB and/or any of its subsidiaries.

“**Conditions**” means the standard terms and condition of sale set out in this document together with any special terms and conditions agreed in writing between the Customer and the Company.

“**Contract**” means the contract for the sale of the Goods incorporating these Conditions and arising from the Company’s acceptance of the Customer’s order in accordance with Condition 2.1 of these Conditions.

“**Customer**” means the person, firm or corporation with whom the Company contracts for the sale of the Goods and/or the supply of Services.

“**Estimated Delivery Date**” means the estimated date for delivery of the Goods notified to the Customer by the Company.

“**Force Majeure**” means any event outside the reasonable control of the Company affecting its ability to perform any of its obligations under these Conditions including Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strikes, lock-outs or other industrial action, difficulties in obtaining raw materials, labour, fuel, transport, parts or machinery, power failure or breakdown in machinery.

“**Goods**” means the goods (including any instalment of the goods) which the Company is to sell to the Customer in accordance with these Conditions.

“**Intellectual Property Rights**” means patents, registered designs, trade marks and service marks (whether registered or not), copyright, design right, and all similar property rights including those subsisting (in any part of the world) in inventions, designs, drawings, confidential information, know-how, business names, goodwill and the style of presentation of goods or services and any applications for protection of any of the above rights.

“**Services**” means the services which are to be provided by the Supplier to the Buyer pursuant to the Contract;

“**Working Day**” means any day of the week except Saturday, Sunday or a bank, public or statutory holiday.

### 2 Basis of Contract

2.1 Any quotation or estimate given by the Company including the Company’s published price list from time to time will be subject to these Conditions and is an invitation to the Customer to place an order, which shall be an offer open to acceptance by the Company and no order placed in response to or any other acceptance of a quotation or estimate shall give rise to a contract binding upon the Company until accepted by the Company. A binding contract shall come into effect upon the earlier of: (a) the Company commencing the manufacture or despatch of the Goods and/or commencement of the supply of Services by the Company; or (b) the Company expressly accepting the Customer’s order whether orally or in writing.

2.2 Unless otherwise agreed in writing between the Customer and the Company, these Conditions are the only conditions upon which the Company transacts business and shall be incorporated into the Contract to the exclusion of all other terms and conditions including any terms or conditions specified or referred to in any order placed by the Customer. Any reference in any document forming part of or evidencing the Customer’s terms or conditions of purchase or business (including any order) shall not have the effect of incorporating any such terms or conditions into the Contract unless expressly agreed to in writing by the Customer and the Company.

2.3 The Company’s employees or agents are not authorised to make any representations concerning the Goods or Services which are not made in written sales literature issued by the Company unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer’s own risk.

2.5 No variation to these Conditions shall be binding unless agreed in writing and signed by an authorised signatory of the Company.

2.6 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 Company shall be subject to correction without any liability on the part of the Company.

2.7 The company has the rights to assign the rights and obligations under these terms & conditions to another company in the group headed by Forest Garden (2006) Ltd (Co. No. 5805820) without re-course to the customer.

### 3 Prices

3.1 Unless otherwise agreed in writing the price of the Goods or Services shall be the price listed in the Company’s published price list. The Company shall endeavour to give the Customer adequate notice of any price changes. All prices are exclusive of Value Added Tax which will be charged to and paid by the Customer in addition to the price of the Goods/Services at the rate applicable at the relevant tax point together with any other duty or tax imposed by any competent authority payable on the sale of the Goods/Services.

3.2 The Company reserves the right, by giving notice to the Customer at any time before delivery of Goods or the supply of Services, to increase the price of the Goods to reflect any increase in the cost to the Company of supplying such Goods or Services which is due to any factor beyond the control of the Company (including without limitation any significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates or quantities for the Goods or dates for providing Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

3.3 Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in writing between the Customer and the Company, all prices are quoted for the Goods or Services by the Company shall be inclusive of the costs of delivering or providing the same to the Customer’s premises or such other premises nominated by the Customer, subject to those premises being within the United Kingdom.

### 4 Services

4.1 If the Contract includes the Company undertaking Services, then such Services shall be on the basis of the exclusions set out in this Condition 4 and the warranties set out in Condition 4.2 below.

4.2 The Company warrants that it will carry out the Services under the Contract with reasonable care and skill. This warranty will be the only warranty given in respect of such Services.

4.3 Subject in every case to the foregoing provisions of this Condition, if the Customer establishes to the Company’s reasonable satisfaction that the Services have not been performed with reasonable care and skill by the Company then the Company shall at its option and within a reasonable time at its sole discretion either: (i) perform again the Services which found not to have been performed with reasonable care and skill; or (ii) pay for such Services to be performed again. Provided that the liability of the Company under this Condition 4.3 shall in no event exceed the charge for the Services in respect of which the failure has occurred and performance of any one of the above options shall constitute an entire discharge of the Company’s liability under this warranty.

4.4 Where the Company is to perform the Services at the Customer’s premises, the Customer shall procure safe access to the premises and the provision of adequate power, lighting, heating and other such facilities or supplies for the Company’s employees or agents as the Company shall reasonably require.

4.5 The Services will be deemed completed and the relevant element of the price accordingly due and payable forthwith when the Company issues a written notice to the Customer confirming such completion or if the Company is available to perform the Services but is prevented from doing so by reason of the lack of relevant assistance from the Customer (such as lack of availability of test components or parts from the Buyer) and/or the condition of the installation site and/or the facilities or services available therein at time of agreed provision of the Services then the Company shall be entitled to charge the Customer for each day lost, or part thereof, in waiting for the Customer to remedy its breach in respect of the site or the facilities available without any obligation on the Company to provide the Services in any event in circumstances where the Customer is in breach.

### 5 Delivery and Passing of Risk

5.1 Delivery shall take place when in the case of Goods to be collected they are loaded onto the vehicle on which they are to leave the Company’s premises to be delivered to the Customer whether such vehicle is in the possession or control of the Customer, the Company or a third party and in all other cases when the Goods are unloaded at the address for delivery specified in the Contract or as notified by the Customer to the Company. If no place for delivery is agreed, delivery shall be made to the Customer’s premises specified on the Customer’s order.

5.2 The risk in all the Goods shall pass to the Customer immediately on delivery to the Customer pursuant to Condition 5.1 above.

5.3 The Company shall be entitled at its discretion to make delivery of the Goods by instalments and to invoice the Customer for each instalment despatched. 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 Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated or to refuse to accept subsequent instalments.

5.4 The Company shall not be bound by any delivery date put forward by the Customer and the Estimated Delivery Date shall be a business estimate only and shall not be binding. Time of delivery shall not be of the essence of the

Contract and the Customer shall not be entitled to cancel any order nor reject any goods or claim damages nor rescind the Contract on the grounds of late delivery of the Goods (or any instalment of the Goods).

5.5 All claims for non-delivery of any Goods shall be made by the Customer to the Company and any carrier engaged by the Company in writing within 24 hours of the Estimated Delivery Date. All claims for short delivery shall be made by the Customer to the Company and any carrier engaged by the Company in writing within 24 hours after the Customer’s receipt of the consignment in question. No claim in respect of non-delivery or short delivery will be considered by the Company unless the Customer complies with the provisions of this Condition 5.5.

5.6 The Customer will be deemed to have accepted the Goods as being in accordance with the Contract unless within 24 hours of the date of delivery of the Goods the Customer notifies the Company in writing of any defect in materials or workmanship or failure to comply with designs drawings specifications or other data supplied by the Customer or any other failure of the Goods to conform with the Contract which would be apparent upon reasonable inspection and testing of the Goods within 24 hours (or within a reasonable time where the defect or failure would not be so apparent) failing which the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

5.7 If the Customer fails to take delivery of or collect the Goods or fails to give the Company adequate delivery instructions (otherwise than by reason of any cause beyond the Customer’s reasonable control or by reason of the Company’s fault) then, without prejudice to any other right or remedy available to the Company, the Company may at the Customer’s expense: (a) store the Goods at its own premises or elsewhere until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

### 6 Loss or Damage in Transit

6.1 Subject to Condition 6.2 below, where the Company has delivered or arranged delivery of the Goods the Company will repair or replace free of charge Goods damaged or lost in transit provided that the Customer inspects the Goods immediately upon their arrival at the destination to which they are despatched under the Contract and check: (a) whether the Goods have been damaged in transit; and (b) that the Goods are those and in the quantity stated on the Company’s delivery note.

6.2 The Company shall not be liable for any damage in transit, shortage of delivery or loss of Goods unless the Customer gives to the Company written notice of such damage, shortage or loss with reasonable particulars thereof within 24 hours of receipt of the Goods or (in the case of total loss) of receipt of the relevant invoice or other notification of despatch and it shall be a condition precedent to any such liability that the Customer returns any damaged Goods or a sample at the Company’s request (save in the case of total loss) to the Company within 24 hours of such receipt.

### 7 Payment Terms

7.1 Subject to any special terms agreed in writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods and/or Services on or at any time after delivery and/or performance of the Services of the Goods to the Customer, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the same, in which event the Company shall be entitled to invoice the Customer for the price of the Goods at any time after the Company has notified the Customer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods or in accordance with Condition 4.5.

7.2 The Company’s invoices shall be paid in full in cleared funds in pounds sterling or such other currency as the Customer shall specify no later than 30 days from the date of the invoice or delivery whichever is earlier notwithstanding that delivery of the Goods may not have taken place and that title to the Goods has not passed to the Customer. If payment is made by the Customer and received by the Company within 7 days of the earlier of the date of the invoice or delivery then the Customer shall be entitled to discount the amount due (excluding any tax, transport and other charges) by 21/2%. If payments received from the Customer are not stated to refer to a particular invoice the Company may appropriate such payment to any outstanding invoice addressed to the Customer. The time of payment of the price shall be of the essence of the Contract. The Company may withdraw any credit facility granted by it to the Customer at its sole discretion at any time.

7.3 If any sum due from the Customer to the Company under the Contract or any other contract is not paid on or before the due date for payment then without prejudice to any other right or remedy available to the Company all sums owed by the Customer to the Company shall become due and payable immediately and the Company shall be entitled to: (a) cancel or suspend its performance of the Contract or any order including deliveries of the Goods and suspend delivery of any other goods to the Customer until arrangements as to payment or credit have been established which are satisfactory to the Company; (b) suspend performance of Services remaining to be carried out; (c) appropriate any payment made by the Customer to such of the Goods (or any goods supplied under any other contract between the Customer and the Company) as the Company may think fit; (d) require the Customer to pay for Goods prior to their despatch or collection from the Company’s premises or for the Services prior to their performance; and (e) charge the Customer interest calculated on a daily basis on all overdue amounts (both before and after judgment) until actual payment at the rate of four per cent (4%) per annum above the base lending rate of the Royal Bank of Scotland prevailing from time to time until payment is made in full.

7.4 The Company shall be entitled to set off any sums owed by the Company to the Customer against any sums payable to the Company under the Contract.

7.5 The Customer shall not be entitled to set-off against or deduct from sums due to the Company under the Contract any amount that the Customer claims from the Company, whether under the Contract or any other contract between the Customer and the Company.

### 8 Title to the Goods

8.1 Title to and property in the Goods shall remain vested in the Company (even though they have been delivered and risk has passed to the Customer) until: (a) payment in full in cash or cleared funds for all the Goods has been received by the Company; and (b) all other money payable by the Customer to the Company on any other account or under the Contract or any other contract has been received by the Company.

8.2 Until title to and property in the Goods shall pass to the Customer the following provisions shall apply: (a) the Customer shall hold the Goods as bailee on behalf of and in a fiduciary capacity for the Company; (b) the Customer shall store the Goods at its premises in a proper manner in conditions which adequately protect, preserve and insure such Goods without any charge to the Company and not tamper with any identification upon the Goods or their packaging and shall ensure that they are stored separately from any other goods whether or not supplied by the Company and are clearly identified as belonging to the Company and the Company shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Customer reasonable notice of its intention to do so; (c) the Company may at any time on demand and without prior notice require the Customer to deliver the Goods up to the Company and the Company may repossess and resell the Goods if any of the events specified in Condition 15 occurs or if any sum due to the Company from the Customer under the Contract or on any other account or under any other contract is not paid when due; (d) for the purposes of this Condition 8 the Company, its employees and agents will be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Customer and/or any other location where any of the Goods are situated at any time without prior notice; (e) the Company shall be entitled to maintain an action against the Customer for the price of the Goods notwithstanding that title to and property in the Goods has not passed to the Customer; and (f) the Company hereby authorises the Customer to use and/or sell the Goods in the normal course of the Customer’s business and to pass good title in the Goods to its customers if they are purchasers in good faith without notice of the Company’s rights. This right shall automatically cease on the occurrence of any event set out in Condition 15 and/or if any sum owed to the Company by the Customer is not paid when due. If the Customer sells the Goods prior to paying the full price thereof the Customer shall hold the proceeds of sale on trust for the Company and shall immediately pay the proceeds of the sale into a separate bank account. The Company shall be entitled to call upon the Customer to assign all claims that the Customer may have against purchasers of the Goods from the Customer.

8.3 The Company’s rights and remedies set out in this Condition 8 are in addition to and shall not in any way prejudice, limit or restrict any of the Company’s other rights or remedies under the Contract.

### 9 Performance of the Contract

9.1 If the Company’s performance of the Contract is suspended following the Company’s acceptance of a request from the Customer or is delayed through the Customer’s default (including, without limitation, lack of, incomplete or incorrect instructions or refusal to collect or accept delivery of the Goods or performance of the Services), the Company will be entitled to and the Customer will immediately make payment in accordance with the Contract for any part of the Goods which were already despatched to the Customer or were ready for despatch or were being manufactured prior to the suspension or delay and for any other additional costs that the Company incurs including storage, insurance and interest as a result of such suspension or delay and any Services completed or that were remaining to be carried out provided that: (a) if the Customer fails to collect or accept delivery of the Goods or any part of them within 30 days of written notification from the Company that the Goods are ready for collection or delivery, the Company will be entitled (without prejudice to the Company’s other remedies under the Contract for such breach) to sell the Goods and to apply the proceeds of sale (if sold) towards payment of all outstanding sums owed

by the Customer to the Company under the Contract; and (b) the Company shall store the Goods at the Customer's risk from the date upon which they are ready for despatch. 9.2 The Customer can only cancel an order (or any part of an order) which the Company has already accepted with the Company's prior agreement in writing and provided that the Customer indemnifies the Company in full in accordance with Condition 13.1. The Company is not bound to agree to any such cancellation and may complete such order even if the Customer claims to cancel the order.

9.3 All Goods are sold and Services provided by reference to the relevant specification given by the Customer to the Company at or before the date of the order and in the absence of any such specification to such specification as the Company shall determine in its absolute discretion and accordingly any sample supplied by the Company is supplied only to give the Customer a general indication of the quality, colour and/or type thereof and will not constitute a subsequent sale by sample.

9.4 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order submitted by the Customer, and forgiving the Company any necessary information relating to the Goods and/or Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

9.5 The quantity, quality and description of and any specification for the Goods shall be those set out in the order as accepted by the Company.

#### **10 Intellectual Property**

10.1 Any Intellectual Property Rights created by the Company in the course of the performance of the Contract or otherwise in the manufacture of the Goods or provision of Services shall remain the Company's property. Nothing in the Contract shall be deemed to have given the Customer a licence or any other right to use any of the Intellectual Property Rights of the Company.

10.2 The Customer by placing any order with the Company which requires the Company to use any of the Customer's Intellectual Property Rights to manufacture the Goods or perform the Services hereby grants to the Company a royalty-free non-exclusive grant of such Intellectual Property Rights for that purpose.

#### **11 Specifications & Designs**

11.1 The Customer shall be solely responsible for the accuracy of the Customer's designs, drawings, specifications and other data supplied to the Company by the Customer or the Customer's employees or agents and in conformity with which the Company is to manufacture the Goods or provide the Services even if the Company examines, inspects, studies or comments to the Customer upon any such designs, drawings, specifications or other data.

11.2 No order for any Goods made or Services performed to the Customer's specification, instructions or design which has been accepted by the Company may be cancelled by the Customer except with the written agreement of the Company and on terms that the Customer shall fully indemnify the Company under Condition 13.1 in respect of such cancellation.

#### **12 Company's Liability**

12.1 The Company shall in no circumstances have any liability to the Customer: (a) for any direct economic loss or for any indirect or consequential loss (including without limitation loss of profits, future revenue, reputation, goodwill or anticipated savings) or damage (whether arising under contract, in tort or otherwise) of the Customer or for any liability of the Customer to any other person for any economic loss, claim for damages or awards howsoever arising from the Goods or Services or their supply to or resale by the Customer; (b) for and to the extent that any Goods were adjusted or altered by anyone other than the Company or without the Company's prior written consent or were used other than in strict accordance with the Company's instructions; (c) unless all drawings, designs, specifications, and other information to be provided by the Customer in connection with the Contract were furnished to the Company in such forms and states which enabled the Company to perform its obligations under the Contract; (d) for any advice, recommendation or other oral statement or representation (save to the extent that such statement or representation was made fraudulently) of the Company or its employees, servants or agents to the Customer or its employees, servants or agents whether before or after the date of the Contract as to the storage, application or use of the Goods or Services which is not confirmed in writing as provided in Condition 2.3; (e) for Goods and/or Services which are to be provided or manufactured and sold in accordance with the Customer's designs drawings specifications and other data, information or materials supplied or instructions furnished by the Company provided that the Goods are so manufactured or Services so provided, and shall in particular have no liability for any loss or damage which the Customer may suffer because the Goods or Services subsequently prove to be unsuitable for the purpose or purposes for which the Customer required them or prove not to be of satisfactory quality; (f) any loss or damage which the Customer may suffer whether in contract, tort (including negligence) or for breach of statutory duty or otherwise whatsoever save as otherwise provided in this Condition 12; (g) any defect or damage where Goods have been stored in unsuitable storage conditions; or(h) all descriptions, representations, specifications, samples, colours, illustrations and other particulars furnished or made orally by the Company are given for general information purposes only and the Buyer acknowledges that it is not entering into the contract in reliance upon any such description representation, specification, sample or other particular.

12.2 If the Company fails to deliver the Goods (or any instalment) or provide Services for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Goods or Services to replace those not delivered over the price of the Goods/Services.

12.3 The Supplier's liability for any physical damage to the premises or any other tangible property of the Buyer resulting from the negligence of the Supplier shall be subject to the limitations set out in Condition 12.4 below.

12.4 In the event that, notwithstanding the provisions of Condition 12.2, the Company is found liable for any loss or damage suffered by the Customer, or the Company is liable for any physical damage pursuant to Condition 12.3 above, the liability of the Company for each claim shall be limited to twice the price of the Goods and/or Services in respect of which the Customer suffered or incurred such loss or damage whichever is the greater, up to a maximum limit of the Company's product liability insurance cover limit from time to time (details of which are available to the Customer on request) provided that where any one event or series of two or more connected events gives rise to more than one claim that limit shall apply to all such claims as though they were a single claim.

12.5 All Goods sold by the Company are supplied with the benefit of the terms implied by section 12 of the Sale of Goods Act 1979. Subject thereto all other conditions, warranties and other terms express or implied, statutory or otherwise are expressly excluded, (whether relating to Goods or Services) save insofar as contained in these Conditions or as otherwise expressly agreed by the Company in writing.

12.6 The price of the Goods and/or Services has been calculated on the basis that the Company will exclude or limit its liability as set out in the Contract and the Customer by placing an order agrees and warrants that the Customer shall insure against or bear itself any loss for which the Company has excluded or limited its liability in the Contract and the Company shall have no further liability to the Customer.

12.7 Nothing in these Conditions shall exclude or restrict the Company's liability in respect of death or personal injury caused by its negligence.

#### **13 Customer's Indemnity & Insurance**

13.1 The Customer acknowledges that the Company places particular reliance upon the provisions of the Contract and in addition to any other remedy available to the Company, the Customer irrevocably and unconditionally agrees to indemnify the Company and its employees, servants or agents in full and on demand and keep them so indemnified from and against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including legal and other professional advisers' fees and all economic loss whether direct or indirect (including loss of profit, future revenue, reputation or goodwill and anticipated savings)) which are made or brought against or incurred or suffered by any of them directly or indirectly and whether wholly or in part resulting from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of entering into this Agreement and this indemnity shall cover all consequential and indirect losses suffered by the Company and its employees, servants or agents and they shall have no duty to mitigate any such loss: (a) the manufacture and sale of the Goods by the Company and/or Services in accordance with the Customer's designs, drawings, specifications or other data or information furnished or instructions given by the Customer; (b) any claims that any Intellectual Property Right or

other exclusive right of any third party has been infringed through the manufacture, sale or use of the Goods or performance of the Services; (c) the cancellation of any order by the Customer after its acceptance by the Company; (d) any breach by the Customer of its obligations under the Contract; or (e) any breach by the Company of its obligations under the Contract or any other act or omission (including without limitation negligence) of the Company, its employees and agents in excess of the liability of the Company which is expressed to be restricted or excluded under the Contract.

#### **14 Force Majeure**

14.1 If the Company's performance of the Contract or any part of it is affected by any event of Force Majeure then the Company may suspend further performance of the Contract (partially or entirely) for so long as the Company is so affected or terminate the Contract without liability to the Customer and such suspension or termination shall not constitute a breach of the Contract by the Company.

14.2 If the Company suspends performance of the Contract under Condition 14.1, the Company will notify the Customer of the suspension in writing. If this suspension continues for more than three (3) months either the Customer or the Company may terminate the Contract by notice in writing. This shall not affect the Company's right to be paid under the Contract for any part of the Goods already despatched or Services already provided to the Customer before the Company suspended the performance of the Contract and to be reimbursed for all other costs, charges and expenses that the Company has incurred under the Contract up to the date of termination.

#### **15 Breach of Contract or Insolvency**

15.1 If any of the following events occurs: (a) the Customer commits a serious breach of any of its obligations under the Contract which is incapable of remedy or fails to remedy, where it is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been requested in writing by the Company to remedy or desist from such breach within a period of 14 days; or (b) any distress execution or diligence is levied upon any of the Customer's goods or property and is not paid out within 7 days or it being levied; or (c) the Customer (being a partnership) or the Customer's partner offers to make any arrangements with or for the benefit of the creditors of the Customer or the Customer's partner generally or there is presented in relation to the Customer or the Customer's partner a petition of bankruptcy; or (d) the Customer (being a limited company) is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer calls a meeting for the purpose of passing a resolution to wind up its company, or such a resolution is passed or the Customer presents or has presented a petition to wind up or present or have presented a petition to appoint an administrator or have an administrative receiver or receiver appointed to the whole or any part of the Customer's business, undertaking, property or assets; or (e) the Customer ceases, or threatens to cease, to carry on business; or (f) the Company reasonably believes that any of the events specified in Condition 15.1 (a) to (e) above is about to occur in relation to the Customer; then the Company may as it thinks fit (without prejudice to any other rights or remedies it may have against the Customer) immediately suspend further performance of the Contract or performance of Services or cancel any outstanding delivery of the Goods or stop any Goods in transit or by notice in writing to the Customer terminate the Contract without liability to the Customer.

15.2 Notwithstanding any such termination or suspension in accordance with Conditions 14 or 15.1 above the Customer shall pay the Company at the contract rate for all Goods delivered or Services performed up to and including the date of suspension or termination and termination of any Contract for whatever reason shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any such owing or to become owing to the other.

#### **16 Sub-contracting and Assignment**

16.1 The Company shall be entitled at any time to assign, charge, sub-contract or otherwise transfer its rights and obligations in whole or in part under the Contract to any other person whatsoever.

16.2 The Customer shall not at any time assign, charge, sub-contract or otherwise transfer its rights or obligations in whole or in part to any third party under the Contract.

#### **17 Notices**

17.1 Any notice authorised or required to be given pursuant to these Conditions shall in the case of a notice to the Company be sent to the Company at the address stated upon the Company's acknowledgement of order from time to time or such other address as the Company shall from time to time notify to the Customer. A notice will be sent to the Customer at the Customer's registered office or principal place of business if the Customer is a company and in any other case to the Customer's address last known to the Company.

17.2 Any notice in Condition 17.1 may be given by registered or airmail post (as appropriate) or facsimile transmission. To prove service in the case of a notice given by registered post it shall be sufficient to show that the notice was despatched by registered post or airmail post (as appropriate) in a correctly addressed and adequately stamped envelope. To prove service in the case of a notice given by facsimile transmission a transmission sheet shall be sufficient to show that the notice was despatched to the correct telephone number. Service shall be deemed to have been effected at the expiration of 7 days after despatch of the same if delivered by registered post or at 10 hours am local time on the next Working Day of the recipient following despatch if sent by facsimile transmission.

#### **18 General**

18.1 Nothing in the Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

18.2 The rights and remedies of either party in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such party to the other nor by any failure of, or delay by the said party in ascertaining or exercising any such rights or remedies. The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

18.3 Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.

18.4 The headings to Conditions are inserted for convenience only and shall not affect the construction of the Contract.

18.5 If at any time any one or more of the Conditions of the Contract (or any sub-Condition or paragraph or any part of one or more of these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission.

18.6 References to any statute or statutory provision in these Conditions shall include: (i) any sub-ordinate legislation made under it; (ii) any provision which it has modified or re-enacted (whether with or without modification); and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

18.7 The Contract sets out the entire agreement and understanding between the Customer and the Company in connection with the sale of the Goods or performance of Services and shall supersede and replace all documentation previously issued by the Company purporting to set out its terms and conditions of sale of the Goods or performance of Services.

18.8 Without prejudice to any other rights and remedies which the Company may have under the Contract, the Company shall, in respect of all debts owed by the Customer to the Company, have a general lien on any of the Customer's goods and property in the Company's possession and the Company shall be entitled after 14 Working Days' notice to the Customer to dispose of such goods or property as the Company thinks fit and to apply any proceeds of sale towards the payment of such debts.

#### **19 Law and Jurisdiction**

19.1 The Contract shall be governed by and be construed in all respects in accordance with English law and the Customer and the Company both hereby irrevocably agree to submit to the non-exclusive jurisdiction of the English Courts.

19.2 The parties agree that the United Nations Convention on Contracts for the International Sale of Goods 1980 shall not apply to the Contract.

For any queries please contact the M&M Timber Sales Office.

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