

Zaloplastics Conditions of Sale

1. General

- 1.1 The terms and conditions set out below (as amended from time to time by Seller by notice in writing to Buyer or by notice on Seller's Website), (the "**Conditions**") shall form part of every contract between Seller and Buyer for the sale and purchase of Products (a "**Contract**") and shall apply to any dealings between Seller and Buyer to the express exclusion of any other terms and conditions (including any which Buyer purports to apply under any purchase order, confirmation of order, acknowledgement of delivery, Specifications or any such other documents or by endorsement upon the documents issued by Seller or otherwise).
- 1.2 No addition to, or modification of, any provision of these Conditions nor any representation, advice or recommendation relating to the Products given by any representative of Seller, shall be binding upon the parties unless made in writing and signed by an authorised representative of each of the parties with the intention of modifying or supplementing these Conditions being clearly expressed.

2. Interpretation

- 2.1 In these Conditions: "**Buyer**" means the person who purchases the Products from Seller; "**Custom Products**" means any goods, other than Standard Products, supplied or to be supplied by Seller; "**Group**" means any subsidiary and any holding company of Seller and any subsidiary of any such holding company in each case from time to time; "**Intellectual Property Rights**" means all intellectual property rights including any patent (including supplementation protection certificates) utility model, rights in invention, copyright, rights in the nature of copyright, database rights, moral right, design right, registered and unregistered designs, registered and unregistered trademark, trade names and get-up, goodwill, know-how and confidential information (whether or not all or any of the same are registered and including all applications and rights to apply therefor) and anything analogous to any of the foregoing in any part of the world; "**Losses**" means all losses, claims, liabilities, costs, charges, expenses and damages of any kind irrespective of whether they were reasonably foreseeable or avoidable; "**Order Acceptance**" means a written acceptance of an order issued by an authorised signatory of Seller in accordance with condition 3.2; "**Products**" means any Standard Products or any part thereof; "**Sample**" means, in relation to a sale by sample, the sample provided by Seller, subject to any tolerances or other variations reflected in any specifications or guidance notes supplied by Seller in relation to the sample, which an authorised signatory of Seller confirms is applicable to the Contract in the Order Acceptance; "**Seller**" means Skiffy and its successors and assigns; "**Seller's Catalogue**" means Seller's product catalogue, as published by Seller from time to time including any catalogue on Seller's Website; "**Seller's Website**" means www.skiffy.com or any successor website; and "**Specifications**" means (i) in respect of Standard Products, the specifications for the relevant Standard Product as set out in the latest publication of Seller's Catalogue at the time such Standard Product is ordered; (ii) in respect of Custom Products, the specifications for the relevant Custom Product which an authorised signatory of Seller has confirmed are the final specifications for such Custom Product; and (iii) in the absence of any such specifications, the specifications that Seller may, acting reasonably, determine to be appropriate from time to time; "**Standard Products**" means any goods which are offered for sale by product number in Seller's Catalogue.
- 2.2 In these Conditions: headings are for convenience only and shall not affect their interpretation; references to a "person" include any individual, company, corporation, firm, partnership, association, organisation, institution, trust or agency, whether or not having a separate legal personality; words in the singular shall include the plural and vice versa as the context admits or requires; any reference to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as time to time amended, consolidated, modified, extended, re-enacted or replaced; and the word "including" shall, unless the context otherwise requires, mean "including without limitation".

3. Quotes and Orders

- 3.1 Quotes are valid for thirty (30) days from the date of the quote, unless otherwise specified by Seller, but are not binding until an order is accepted by Seller in accordance with condition 3.2.
- 3.2 Each order for Products made by Buyer from Seller shall be deemed to be an offer by Buyer to purchase the Products specified in the order on the terms and conditions set out in these Conditions. An order is not binding on Seller until it is accepted by Seller issuing the Order Acceptance or (if earlier) by Seller either commencing manufacture of the Products or any related samples, apportioning the Products to Buyer's order or dispatching the Products to Buyer.
- 3.3 Once accepted, an order may only be cancelled, varied or suspended by Buyer with the express prior written agreement of Seller.
- 3.4 The quantity and type of Products ordered shall be as set out in the order form or, if different, on the Order Acceptance.

4. Descriptions, Samples and Literature

- 4.1 All drawings, specifications and advertising issued by Seller and any descriptions, details or illustrations contained in any Seller's Catalogue are issued or published for the sole purpose of giving an approximate idea of the Products described in them and will not be relied on by Buyer or form part of the Contract except as provided in condition 5.1 and condition 10.
- 4.2 Any typographical, clerical or other error or omission in any Seller's Catalogue, quote, price list, acceptance of offer, Order Acceptance, label, packaging, invoice or other document or information issued by Seller may be corrected by Seller, without liability to Buyer, at any time either by correcting any such matter in public or by publishing the correction on Seller's Website or by notifying Buyer in writing and such correction shall be binding upon Buyer forthwith.
- 4.3 Except as otherwise required by law, the Contract shall not be: (a) a sale by sample (even if samples have been provided) unless Seller expressly states on the Order Acceptance that the Contract is to be a sale by sample; or (b) a sale by description even if a description has been provided.

5. Specifications

- 5.1 Buyer will ensure that it undertakes adequate tests to ensure that where the Product meets the Specifications or, where applicable, conforms to the Sample in all material respects it is of satisfactory quality and fit for all of Buyer's purposes. Buyer expressly acknowledges that, irrespective of any guidance provided to it by Seller, it is not relying on Seller's skill or judgement in determining whether the Products will be fit for any or all of its purposes.
- 5.2 Seller shall be entitled to make any changes to any Specifications which do not materially affect the quality or performance of the Products.

- 5.3 In respect of any Specifications supplied to Seller by or on behalf of Buyer or variations to Specifications made at the request of Buyer and any Product either derived from any such Specifications or supplied by or on behalf of Buyer, Buyer warrants, represents and undertakes that such Specifications:

- 5.3.1 fully and accurately reflect Buyer's requirements for the Products to be made pursuant to such Specifications;
- 5.3.2 are complete and fit for the purpose of Seller producing and/or supplying (if agreed) Products complying with such Specifications;
- 5.3.3 will result in Products which are fit for Buyer's purpose;
- 5.3.4 do not infringe the Intellectual Property Rights of any third parties and Seller, its Group and agents are entitled to use any Intellectual Property Rights comprised in such Specifications or in any product or process described in the Specifications for the purposes of manufacturing the Products; and
- 5.3.5 comply with all applicable laws and regulations.
- 5.4 Except as otherwise expressly provided in the Contract or agreed in writing between Seller and Buyer, Seller shall own all of the Intellectual Property Rights created by Seller, its Group or agents in the course of the performance of the Contract or otherwise in connection with the manufacture of the Products.

6. Price

- 6.1 Subject to condition 6.2, the price of the Products shall be the price specified in the applicable quote or, in the absence of an applicable quote, the price set out in Seller's price list in force as at the time the order is accepted (the "**Price**"). The Price is inclusive of standard packaging in accordance with Seller's current practice. The Price reflects the limitations on liability set out in these Conditions but, if requested by Buyer, Seller will advise Buyer of the additional costs which would apply if Seller agrees to any variations to such limitations on liability.
- 6.2 Seller reserves the right, by giving notice to Buyer at any time before delivery, to increase the Price to reflect any increase in the cost to Seller of supplying any Products which is due to:
- 6.2.1 any factor beyond the reasonable control of Seller;
- 6.2.2 any increase in the cost of labour or materials including any storage costs if the Products are not collected or delivered in accordance with the Contract;
- 6.2.3 any variation requested by Buyer to delivery dates, quantities, Specifications or the scope of Seller's instructions;
- 6.2.4 any delay or additional work or materials caused by any instructions, neglect or default of Buyer; or
- 6.2.5 any failure of Buyer to procure the supply to Seller of adequate and timely information, instructions or specifications.
- 6.3 The Price is exclusive of any applicable value added tax or other taxes or duties and of all costs and charges in relation to non-standard packaging, loading, unloading, carriage and insurance or similar costs, which (if any) shall be paid in addition by Buyer at the time it is due to pay for the Products. Where Seller initially pays carriage or other costs to be borne by Buyer, Seller shall be entitled to render an invoice forthwith in respect of such costs.

7. Payment

- 7.1 Seller shall at its discretion be entitled to invoice Buyer in advance for whole or part payment of the Price or any other amounts payable by Buyer.
- 7.2 Seller shall be entitled to:
- 7.2.1 offer and withdraw credit accounts at any time;
- 7.2.2 request references and make credit reference searches in relation to Buyer.
- 7.3 Subject to condition 7.1, payment of any Seller's invoice is due (without deduction, discount, abatement or set-off) within thirty (30) days of the date of the invoice, notwithstanding that delivery may not have taken place or that property in the Products has not passed to Buyer. Unless otherwise expressly agreed by Seller, payment shall be made in the same currency as the Price. The time of payment of sums due from Buyer shall be of the essence of these Conditions. No payment will be deemed received until received by Seller in cash or cleared funds. Interest will be payable on overdue amounts at the rate of three (3) per cent per annum above the base rate of the Dutch National Bank (*De Nederlandsche Bank*) from time to time.
- 7.4 If any sums are not paid on or before the due date for payment, interest will accrue on the amount unpaid until payment in full is made (both before and after any judgment). The parties agree that the provisions of this condition 7.4 provide a substantial contractual remedy for the late payment of sums due pursuant to these Conditions.
- 7.5 If Buyer fails to make any payment when due pursuant to these Conditions and/or pursuant to any other contract between Buyer and Seller in accordance with its terms then, without prejudice to any other right or remedy available to Seller, Seller shall be entitled to:

- 7.5.1 terminate the Contract or any other contract between Buyer and Seller;
- 7.5.2 deduct outstanding sums from any sums owed by Seller to Buyer under the Contract or otherwise;
- 7.5.3 require Buyer to pay any costs of storage of the Products;
- 7.5.4 suspend any further deliveries to Buyer under the Contract or any other contract until paid;
- 7.5.5 treat the Contract as repudiated and terminated;
- 7.5.6 resell any Products not yet delivered to Buyer; and/or
- 7.5.7 retain any sums paid as deposit for the Products.

8. Delivery

- 8.1 Unless otherwise agreed in writing, Products will be sent to Buyer by a carrier service chosen by Seller, acting reasonably. Delivery of the Products to Buyer shall be effected by Seller delivering them to the carrier or by collection by the carrier. Thereafter, transport of such Products shall be subject to the carrier's conditions which shall be notified to Buyer, if requested. Seller may deliver early.
- 8.2 Where it is agreed in writing that the Products shall be delivered by a method other than that referred to in condition 8.1 then delivery shall be effected:
- 8.2.1 where the Products are to be collected by Buyer from Seller's premises, by Seller notifying Buyer that the Products are ready for collection;
- 8.2.2 where the Products are delivered by Seller, by Seller delivering the Products to the address nominated by Buyer for delivery; or
- 8.2.3 where the Products are to be transported by a third party, by collection by or delivery to that third party of the Products.
- 8.3 Any periods of time or dates quoted for delivery of the Products are approximate only. Time for delivery shall not be of the essence. Seller shall

- not be liable for any delay in delivery of the Products. Seller may deliver up to 10 per cent more or 10 per cent less than the quantity of Products specified in the order and Buyer shall accept such variation in quantity and shall pay the Price as adjusted to reflect such variation in quantity.
- 8.4 Seller shall not be responsible for any Losses incurred or suffered by Buyer as a result of a failure to deliver the Products or for short delivery unless Buyer has informed Seller in writing within ten working days from the estimated date of delivery in relation to a failure to deliver or the actual date of delivery in relation to a short delivery. In any event, subject always to condition 11, where for any reason Seller is so liable, Seller's liability shall be limited to:
- 8.4.1 the amount by which the price in the cheapest available market of similar goods to replace those not delivered exceeds the Price of the Product not delivered; or
- 8.4.2 if there is no such market, an amount equal to the Price applicable to the Products not delivered.
- 8.5 Where the Products are to be delivered in instalments, each delivery shall constitute a separate obligation and neither any failure by Seller to deliver nor any claim in respect of any one or more instalments by Buyer shall entitle Buyer to treat the Contract as a whole as repudiated.
- 8.6 Where Buyer fails to take delivery of the Products or fails to give Seller adequate delivery instructions in advance of the time stated for delivery (otherwise than by reason of any cause beyond Buyer's reasonable control or by reason of Seller's neglect or default) then the Products shall be deemed to have been delivered at the time stated for delivery and, without prejudice to any other right or remedy available to Seller, Seller may:
- 8.6.1 store the Products until actual delivery and charge Buyer for the reasonable costs (including insurance) of storage, if applicable but without any obligation on Seller to procure insurance; or
- 8.6.2 where Buyer has failed to take delivery of the Products on or before the fifth working day following the intended day for delivery, sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) shall account to Buyer for the excess over the Price or invoice Buyer for any shortfall below the Price.
- 8.7 If, upon delivery of the Products, Buyer discovers that it has incorrectly ordered those Products, Seller's standard handling charge from time to time will be payable by Buyer if Seller agrees (at its sole discretion) to accept return of those Products.
- 9. Risk and Property in the Products**
- 9.1 Products supplied by Seller shall be at Buyer's risk immediately on and after delivery and so Buyer should arrange appropriate insurance from that point.
- 9.2 Title (legal and beneficial) in all Products supplied or sold by Seller shall be retained by Seller until the earlier of:
- 9.2.1 Seller having received in either cash or cleared funds all sums due in respect of the Products and on any account whatsoever from Buyer to Seller; or
- 9.2.2 (on an item by item basis) the Products having been used or incorporated into other products.
- 9.3 Until such time as the property in the Products passes to Buyer, Buyer must:
- 9.3.1 hold such Products (on a fiduciary basis for and on behalf of Seller) as Seller's bailee and act in good faith to protect Seller's interests in the Products;
- 9.3.2 store such Products (at no cost to Seller) separately from all other goods of Buyer in such a way that such Products remain identifiable as property of Seller and shall not mix them with any other goods;
- 9.3.3 not pledge or allow any lien, charge, or other interest to arise over the Products or their documents of title;
- 9.3.4 not destroy or deface any identifying marks on such Products or relevant packaging and maintain such Products in satisfactory condition; and
- 9.3.5 keep such Products insured on Seller's behalf and in the event of any claim hold the proceeds of such insurance on trust for Seller.
- 9.4 Seller shall be entitled at any time to require Buyer to deliver up any Products to Seller prior to property in the Products passing to Buyer. Buyer grants Seller and its agents an irrevocable licence at any time to enter any premises where such Products are stored to inspect or, if Buyer has failed to deliver up possession when requested by Seller, to repossess such Products.
- 10. Quality**
- 10.1 Subject to the remaining provisions of these Conditions, Seller warrants that on delivery all Products will be of satisfactory quality. Buyer expressly agrees that a Product will be deemed to be of satisfactory quality and fit for its purpose if (a) in relation to a sale by sample, the Product complies with the Sample in all material respects; or (b) in all other cases, the Product complies with its Specifications in all material respects.
- 10.2 The warranties contained in condition 10.1 shall not apply unless:
- 10.2.1 in respect of defects that are apparent on inspection of the Products, Buyer notifies Seller, in writing, setting out in reasonable detail the nature of the breach of warranty within fourteen (14) days after the delivery of the Products; or
- 10.2.2 in relation to defects that are not apparent on inspection of the Products, Buyer notifies Seller in writing setting out in reasonable detail the nature of the breach of warranty within fourteen (14) days after the defect became apparent or ought to have become apparent to Buyer, and in any event within twelve (12) months of the date of delivery of the Products; and
- 10.2.3 after receiving such notice of the defect, Seller is given reasonable opportunity to inspect the Products and, at Seller's request (acting reasonably), the Products are returned to Seller's place of business for the purposes of such inspection; and
- 10.2.4 the total price for the Products has been paid by Buyer.
- 10.3 Seller shall not be liable for any breach of any of the warranties in condition 10.1 if:
- 10.3.1 the Product conforms to its Specifications or, where applicable, Sample in all material respects;
- 10.3.2 the breach was caused directly or indirectly by Buyer's breach of condition 5.3;
- 10.3.3 the breach was caused directly or indirectly by the acts or omissions of any persons not expressly authorised by Seller, including repairs, additions or changes made to the Products by or on behalf of Buyer;
- 10.3.4 the breach was caused directly or indirectly by parts, materials or equipment incorporated into a Product but not manufactured by Seller, in respect of which Buyer shall only be entitled to the benefit of any such warranty or guarantee as was given by the manufacturer to Seller and which is capable of being assigned to Buyer (at Buyer's cost);
- 10.3.5 Buyer makes further use of or resells the Products after giving notice of a defect or fails to comply with Seller's reasonable instructions in relation to a product hold or recall; or
- 10.3.6 the breach was caused directly or indirectly by environmental conditions at Buyer's site or use or storage or handling of the Products outside the parameters of its Specifications or instructions supplied by Seller or by any matter specifically excluded by Seller by notice in writing including improper use, carelessness, mishandling, operating errors, vandalism or unforeseen events.
- 10.4 Subject to conditions 10.2 and 10.3, where Products or parts thereof returned to Seller are found, in the reasonable opinion of Seller, not to conform with the warranty contained in condition 10.1 or any other warranties, quality standards or conditions implied by law, Seller shall discharge any liability in full by, at its sole discretion, repairing or replacing the whole or part of all or any of the Products or refunding the Price of the non-conforming Products. Any Products which have been so replaced shall be owned by Seller.
- 10.5 Subject to the provisions of condition 11, the warranties contained in condition 10.1 shall be the sole extent of Seller's liability arising out of or in connection with the Products.
- 10.6 Buyer shall comply with all reasonable instructions of Seller in relation to any product hold or product recall campaign organised in respect of the Products or any other corrective action reasonably taken by or on behalf of Seller in respect of the Products after delivery to Buyer.
- 11. Limitation of Liability**
- 11.1 For the purposes of this condition 11:
- 11.1.1 "**Claim**" means a claim arising out of or in connection with the supply of any Products to Buyer or as a result of breach of these Conditions or of any duty of any nature whatsoever by Seller or pursuant to any use made by Buyer or resale by Buyer of any Products (or of any product incorporating any of the Products) or as a result of any representation, statement, act or omission including negligence arising under or in connection with these Conditions or the Contract;
- 11.1.2 "**Claim Limit**" means, in respect of any calendar year, the greater of:
- 11.1.2.1 the aggregate amount payable to Seller by Buyer for goods of the type that are the subject of the Claims purchased by Buyer from Seller in that year (the "**Relevant Goods**");
- 11.1.2.2 in the first three months of that year, the aggregate amount payable by Seller to Buyer for the Relevant Goods purchased in the previous year; or
- 11.1.2.3 where no Relevant Goods were purchased in the previous year or the Claim does not relate to the purchase of goods, to an aggregate sum of (a) where the Relevant Goods are exclusively Standard Products, the equivalent (according to the average rate by the National Bank of The Netherlands, DNB, for the first day of a given calendar year) of EUR 25,000; or (b) where the Relevant Goods include Custom Products, the equivalent (according to the average rate by the National Bank of The Netherlands, DNB, for the first day of a given calendar year) of EUR 50,000.
- 11.2 Without prejudice to conditions 11.3 and 11.6, Seller's aggregate liability (including any liability for the acts or omissions of its employees, agents, sub-contractors or other members of its Group) to Buyer for all Claims whether arising in contract, tort (including negligence or breach of a statutory duty), misrepresentation, restitution or otherwise shall be limited as follows:
- 11.2.1 Seller's aggregate liability for a Claim in relation to any single item of Product shall be limited to the Price payable to Seller by Buyer for that item;
- 11.2.2 Seller's aggregate liability to Buyer for all Claims arising in each calendar year shall be limited to the Claim Limit.
- 11.3 Seller shall not be liable to Buyer or any other party for any (a) indirect Losses, (b) economic loss, (c) loss of profits or anticipated profits, (d) loss of expected future business, (e) damage to reputation or goodwill, nor (f) any claim for consequential compensation whatsoever (however caused), which arises in connection with the supply of Products or related services by Seller, in each case whether direct or indirect or consequential and, whether such losses are suffered by Buyer or by any other party.
- 11.4 Where a Court adjudicates that an exclusion of liability in respect of any category of damage as stated in condition 11.3 and on which the Seller wishes to rely is, for any reason unenforceable, Seller's liability in respect of such category of damage under the relevant Claim shall be limited to the Claim Limit.
- 11.5 Subject to condition 11.6, unless otherwise expressly provided in these Conditions all implied warranties, terms and conditions are excluded from the Contract to the fullest extent permitted by law and Seller will not be liable to Buyer for any loss of any kind whatsoever which arises out of the breach of implied warranties, terms or conditions, or breach of any duty of any kind imposed on Seller by operation of law.
- 11.6 Nothing in these Conditions shall exclude or limit Seller's liability in respect of any claim (other than by Buyer for re-imbursalment of sums paid to a third party) for death or personal injury caused by its negligence, or in respect of liability for defective products or for fraudulent misrepresentation or for any other liability to the extent that it may not be so excluded or limited by law.
- 11.7 If Buyer becomes aware that any third party has made or appears likely to make any claim in respect of the Products (including as to defects in them or rights infringed by them) it shall:
- 11.7.1 promptly notify Seller of such claim or circumstance;
- 11.7.2 promptly provide such assistance to Seller and take such action as Seller may request to avoid, dispute, defend, mitigate, resist, appeal or compromise such claim or circumstance including but not limited to allowing Seller to take full control of any proceedings or negotiations in connection with the claim; and
- 11.7.3 not settle or compromise, make any admissions, nor agree any matter in the conduct of any dispute, without the prior written approval of Seller.
- 11.8 Without prejudice to any other provision of these Conditions, Seller will not be in breach of the terms of the Contract for any delay in performing, or failure to perform, its obligations under the Contract if that failure or delay was due to any cause or circumstance beyond Seller's reasonable control, which shall, without limiting the generality of the term, be deemed to include war or other action of military forces, terrorism, riot, civil commotion, sabotage, vandalism, accident, break down or damage to machinery or equipment, fire, flood, acts of God, strike, lock-out or other industrial disputes (whether or not involving employees of Seller) or shortage of materials at the market rates existing when the Agreement is made, legislative or administrative interference or was due to any failure, neglect or delay on the part of Buyer or its agents or representatives.
- 11.9 Seller reserves the right to defer the date of delivery or to terminate the Contract or reduce the volume of the Products ordered by Buyer (without liability to Buyer) if it is prevented from or delayed in the carrying on of its

- business due to an event referred to in condition 11.8 occurring, provided that where the event in question continues for a continuous period in excess of thirty (30) days either party shall be entitled to give notice in writing to the other to terminate the Contract with no liability due to or by either party.
- 11.10 Buyer acknowledges that the limitations of liability set out in these Conditions are reasonable and reflect the commercial intentions of the parties in the context of the anticipated earnings of Seller under the Contract and any other contracts and the ability of Buyer to protect itself through insurance. Seller may be willing to vary the limitations on liability in relation to specific Products if requested by Buyer subject to Buyer bearing the additional costs as notified to it by Seller. For the avoidance of doubt, any payment made by Seller to Buyer in any calendar year in respect of any Claim made by Buyer pursuant to any contract or otherwise shall operate to reduce the amount of the Claim Limit which is available for further Claims in that calendar year.
- 12. Termination**
- 12.1 Without affecting any other rights and remedies it may have, Seller may terminate the Contract forthwith if:
- 12.1.1 Buyer breaches any terms of any contract with Seller;
- 12.1.2 Buyer makes any composition or voluntary arrangement with its creditors or any step, application, order, proceeding or appointment is made or taken by or in respect of Buyer (including, without limitation, the making of an application or the giving of any notice) by Buyer or any other person for a distress, execution, winding up, dissolution, or to appoint an administrator of Buyer or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction);
- 12.1.3 an encumbrance takes possession, or a receiver (administrative or otherwise) is appointed, of any of the property or assets of Buyer; or Buyer ceases, or threatens to cease, to carry on business; or
- 12.1.4 Seller reasonably apprehends that any of the events mentioned in conditions 12.1.2 to 12.1.3 above is about to occur in relation to Buyer and notifies Buyer accordingly.
- 12.2 Buyer may, on thirty (30) days' written notice, terminate:
- 12.2.1 the Contract within thirty (30) days of receiving notice from Seller pursuant to conditions 6.2.1 or 6.2.2 that the Price of the Products which are the subject of the Contract is increasing by more than 10 per cent of the original Price specified in applicable to the Products at the time the Contract is concluded; or
- 12.2.2 that part of the Contract relating to Custom Products on thirty (30) days' written notice if it does not wish (acting reasonably) to accept the changes to the Specifications of the Custom Products notified by Seller pursuant to condition 5.2.
- 12.3 Where Seller terminates the Contract in accordance with conditions 7.5 or 12.1 then, without prejudice to any other right or remedy available to Seller:
- 12.3.1 Seller shall be entitled to terminate any other contract or suspend any further deliveries under the Contract or any other contract;
- 12.3.2 where the Products have been delivered, but not paid for, subject to condition 9, Buyer's right to possession shall terminate and Seller may dispose or use any of the Products as it wishes; and
- 12.3.3 the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 12.4 Termination of the Contract, for whatever reason, shall not affect any of its provisions which are intended to continue to have effect after it has come to an end, including but not limited to conditions 9, 10, 11, 12, 13 and 15.
- 13. Indemnity**
- 13.1 Without prejudice to Seller's other rights and remedies, Buyer shall indemnify and keep indemnified Seller, its Group and their employees and agents on demand in full against any Losses incurred or suffered as a result of:
- 13.1.1 cancellation, variation or suspension of an order by the Buyer pursuant to condition 3.3;
- 13.1.2 any claim brought by any third party in respect of Losses, injury or damage caused directly or indirectly by the Custom Products or by any Products which, following delivery, have been subjected to any use other than the authorised use for such Products (being the use for which such Products are commonly supplied) or modified or repaired in any way by a person other than Seller or any event has occurred (including any act or omission) which would result in condition 10.1 ceasing to apply to those Products;
- 13.1.3 the use of Specifications supplied by or on behalf of Buyer or modified at the request of Buyer;
- 13.1.4 any breach of condition 5.3 and any claims by any third party in relation to any infringement or alleged infringement of any of its Intellectual Property Rights as a result of the use, possession or supply of any Custom Product or any Specifications supplied by or on behalf of or modified at the request of Buyer; and
- 13.1.5 any termination pursuant to conditions 7.5 or 12.1.
- 14. Export Terms**
- 14.1 Where the Products are supplied for export from the Netherlands, the provisions of condition 14 shall (subject to any special terms agreed in writing between Buyer and Seller) apply and shall prevail to the extent of any conflict with any other terms and conditions set out in these Conditions.
- 14.2 Buyer shall be responsible for complying with any legislation or regulations applying to the Products in the country of destination governing the export of the Products or any product incorporating the Products from the Netherlands (including, if necessary, satisfying Customs and Excise that value added tax is not payable on the Price) and the importation of the Products into the country of destination and for the payment of any applicable import or export duties or taxes thereon. Buyer shall be responsible for notifying Seller of any obligations which Seller is obliged to comply with pursuant to any such legislation or regulations and for bearing or re-imbursing to Seller any associated costs.
- 14.3 Any reference to Incoterms in any quote shall be construed as a reference to Incoterms (2000) and any quote shall be Ex Works, unless otherwise stated in writing by the Seller.
- 15.1 Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through its subcontractors or agents or any member of its Group. Any act or omission of any such subcontractor or agent or member of its Group shall be deemed to be the act or omission of Seller and shall be subject to the exclusions or limitations on liability set out in these Conditions. Buyer shall not transfer, assign or sub-contract any of its rights or obligations under the Contract without Seller's prior written consent and in any event shall remain responsible for the performance of the Contract by any transferee, assign or sub-contractor.
- 15.2 Any notice shall be in writing including by fax, addressed to the other party at, in the case of Seller, Transformatorweg 37, 1014 AJ Amsterdam with, in the case of notice under condition 12.2, a copy to the Company Secretary at the Seller's registered office address and in the case of Buyer at its registered address or such other address as may at the relevant time have been notified to Seller. Hand delivered notices shall take effect immediately, postal notices, two working days after posting by first class post and, if sent by fax, at the date and time on the sender's transmission acknowledgement slip or (if lost) on receipt.
- 15.3 No waiver by Seller of any breach of the Contract by Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision. Failure by Seller to enforce any term of the Contract shall not be waiver of Seller's rights.
- 15.4 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.
- 15.5 The Contract contains the entire agreement and understanding of the parties and supersedes all prior agreements, understandings or arrangements (both oral and written) in respect of the Products (save that neither party seeks to exclude liability for fraudulent pre-contractual misrepresentation upon which the other party can be shown to have relied).
- 15.6 The Conditions and Contracts shall be governed by the laws of the Netherlands. Any dispute shall be referred to the exclusive jurisdiction of the Courts of Amsterdam save that Seller shall retain the right to bring proceedings against Buyer in any other court.
- 15.7 Save in respect of the rights, indemnities or warranties expressly stated to be given in favour of the Group, or Seller's agents, all of which shall accrue directly for their benefit, the parties to the Contract do not intend that any term of the Contract will be enforceable by any person that is not a party to it. No such person shall have any rights relating to any extension, waiver and/or amendment to the Contract including but not limited to, any rights to approve any extension, waiver and/or amendment to the Contract.

15. Miscellaneous