

4124-8835-3610 v1 Nicholls Limited TA Tipppers 'R' Us Aggregate Supply and Muck Away Terms and Conditions V1 Sep 23

Terms and Conditions of Sale of Goods and Supply of Additional Services

Aggregate and Muck Away

The Customer's attention is particularly drawn to the provisions excluding or limiting liability in conditions 3, 5, 7 and 12.9.

1) Definitions and Interpretation

In these Conditions the following words have the following meanings:

'Additional Services' means those services as set out in the Quotation;

'Cancellation Charge' means the charge due and payable by the Customer pursuant to Condition 2.7 for Late Cancellation as set out in the Supplementary Charges List;

'Company' means Nicholls Limited trading as Tipppers 'R' Us (company number: 09556852) whose registered office is at Sinks Pit Main Road, Kesgrave, Ipswich, IP5 2PE;

'Contract' means any contract between the Company and the Customer for the sale of Goods and provision of Additional Services, incorporating the Quotation, the Order Confirmation, the Supplementary Charges List, and these Conditions;

'Customer' means the person(s), firm or company who places an order for Goods and/or Additional Services which is accepted by the Company;

'Defective Goods' shall have the meaning given in Condition 5.2;

'Delivery' means the time at which the Goods are made available for discharge at the Discharge Point.

'Discharge Point' means the location for Delivery of the Goods as stated on the Quotation or Order Confirmation or as otherwise agreed by the parties in writing.

'Event of Force Majeure' shall have the meaning given in Condition 10;

'Goods' means those goods as listed in the Quotation to be supplied to the Customer by the Company (including any part or parts of them and pallets where applicable);

'Group Company' means any subsidiary or holding company of the Company and the ultimate holding company of the Company and any subsidiary company of any of them (in each case from time to time) (and the terms "Subsidiary" and "Holding Company" shall have the meanings given to them by Section 1159 of the Companies Act 2006);

'Hired Haulage Charge' means the charge payable for third party haulage as set out in the Supplementary Charges List;

'Order Confirmation' means written confirmation from the Company to the Customer stating that the Customer's order is accepted, attaching these Conditions.

'Part Load Charge' means the charge for part loads as set out in the Supplementary Charges List;

'Quotation' means the document issued by the Company to the Customer detailing its offer to supply Goods and/or Additional Services subject to an Order Confirmation;

'Returned Materials Charge' means the charge payable for returning and disposing of material as set out in the Supplementary Charges List;

'Statutory Requirements' all relevant legislation, regulations, instructions, or guidance issued by the Government, Government Agencies, Local Authorities, statutory regulators, and Public/Corporate Bodies established by Parliament/Government including (without limitation) regulations under the Bribery Act, the Civil Aviation Act, the Construction (Design and Management) Regulations, the Environmental Acts, Factories Acts, the Data Protection Act, the Health and Safety at Work, etc. Act and observance of the Road Traffic Acts should they apply;

'Supplementary Charges List' means the charges additional to the Quotation payable by the Customer as applicable, including without limitation the Cancellation Charge, the Part Load Charge, the Hired Haulage Charge, the Returned Materials Charge and the Waiting Time Charge, a copy of which is supplied to the Customer as part of the Contract; and

'Waiting Time Charge' means the charge payable for waiting at the disposal point as set out in the Supplementary Charges List.

Any reference to a British Standard ("BS") shall be the latest version of the standard.

2) Basis of Contract

- 2.1) Subject to any variation under Conditions 2.3 and/or 3.13 the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification, or other document whatsoever and whenever). These Conditions supersede all earlier conditions of Contract issued by the Customer.
- 2.2) Each order for Goods and/or Additional Services by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods and/or Additional Services subject to these Conditions. It is the Customer's obligation to ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.3) Subject to Condition 3.21, any variation to these Conditions and any representations about the Goods and/or Additional Services shall have no effect unless expressly agreed in writing and executed by a director of the Company.
- 2.4) No order placed by the Customer shall be deemed to be accepted by the Company until an Order Confirmation is issued by the Company. The Company is not bound to issue an Order Confirmation and may instead, without reason and at its sole discretion, either reject the order entirely, or reject the order and issue a revised Quotation for consideration by the Customer.
- 2.5) Any Quotation issued by the Company is subject to these Conditions. Without prejudice to the Company's right to reject an order, any Quotation will be valid for a period of 14 days from its date of issue.
- 2.6) All Goods are sold and/or Additional Services provided by reference to the Company's specification for those Goods and/or Additional Services in force at the date of the Company's Order Confirmation and available to the Customer on request.
- 2.7) Any cancellation or delay of an order by the Customer on or after 3pm on the working day before the order is due to be fulfilled, or if the Company cannot deliver an order due to a failure of the Customer to comply with its obligations pursuant to Condition 3.3 or 3.7 ("**Late Cancellation**"), is subject to payment by the Customer of the following charges falling immediately due:
 - a) the Cancellation Charge;
 - b) the Returned Materials Charge; and
 - c) the Hired Haulage Charge.
- 2.8) The Customer agrees and acknowledges that the charges payable pursuant to Condition 2.7 do not constitute penalties and represent a genuine pre-estimate of the losses that the Company might suffer as a result of Late Cancellation.
- 2.9) Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the strengths or use of the Goods by the Company is followed or acted upon entirely at the Customer's own risk, such advice and/or recommendation should not be relied upon.
- 2.10) 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.
- 2.11) The description of the Goods and/or Additional Services shall be set out in the Company's Order Confirmation and/or, the Quotation. The Company contracts as a supplier only and shall not be bound by nor imputed with any knowledge of any contract between the Customer and any other person.
- 2.12) All drawings, descriptive matter, specifications, and advertising issued by the Company and any descriptions, details or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Additional Services described in them, and they will not form part of the Contract.

3) Delivery and Acceptance of Goods

- 3.1) Where the Company has agreed in writing to provide transportation for Delivery or collection of the Goods and/or for provision of the Additional Services, the Customer shall, at its own cost, provide all reasonable assistance required by the Company at the Discharge Point to complete the transmission.
- 3.2) The Customer is deemed to have knowledge of the site, property or land leading to and at the Discharge Point and the Customer warrants that the condition of the Discharge Point is suitable for such transmission.
- 3.3) The Customer shall ensure the ground (including any private access road or track) is not too soft or unsuitable to allow for transmission and allows for the safe movement of vehicles without risk of damage.
- 3.4) The Customer shall be responsible for the unobstructed access and egress to and from the Discharge Point.
- 3.5) On Delivery, the Customer shall provide:
 - a) an authorised representative to accept the Goods;
 - b) all appropriate instructions concerning the delivery of the Goods; and
 - c) all applicable documentation.

- 3.6) If in the Company's opinion, the Customer has failed to comply with its obligations under Conditions 3.1 – 3.5 above, the Company may at its sole discretion refuse to collect or deliver the Goods and/or to provide the Additional Services.
- 3.7) If Delivery, collection, or provision of the Additional Services is not completed or carried out pursuant to Condition 3.6, the Goods will be returned to the Company, and the Customer shall remain liable for the cost of the Goods, the transportation cost, and any other sums as may be payable in accordance with the Quotation and the Supplementary Charges List.
- 3.8) The Company shall not be liable for the consequences of any delay in the collection or Delivery at the Customer's Discharge Point howsoever arising.
- 3.9) The Goods and/or Additional Services will not be delivered by the Company in the absence of the Customer or its representative, unless agreed beforehand in writing. If Delivery is completed by the Company in the absence of the Customer or its representative, the purchase delivery note shall be forwarded to the Customer's address and deemed to be conclusive proof of acceptance of the Goods and/or Additional Services.
- 3.10) Any personnel supplied by the Company for installation or discharge of the Goods at any Discharge Point shall be deemed to be under the direction and control of the Customer. Such personnel shall for all purposes in connection with their employment in the installation or discharge of the Goods be regarded as the servants or agents of the Customer who shall be solely responsible for all claims arising in connection with installation or discharge of the Goods by, or with the assistance of, such personnel.
- 3.11) Unless otherwise agreed in writing by the Company, Delivery of the Goods shall take place at the Discharge Point during normal working hours and, where the Goods are to be discharged into any plant, this shall be deemed to be the relevant Discharge Point.
- 3.12) Subject to Condition 3.9, any complaints relating to the service provided by personnel delivering the Goods must be raised by the Customer with 2 days of the date of Delivery as the Company is unable to properly investigate issues after this time. Any such complaints raised after this time shall not be considered.
- 3.13) The Customer shall provide and clearly indicate to the Company a safe and proper route from a metalled highway to the agreed Discharge Point.
- 3.14) Any dates or times specified by the Company for Delivery or collection of the Goods are intended as an estimate only and time shall not be of the essence. If no dates or times are specified, Delivery will be within a reasonable time.
- 3.15) The Company shall not be liable to any Customer (whether in contract, tort, negligence, breach of statutory duty or otherwise) for any damages whether direct, indirect or consequential (including but not limited to any economic loss or loss of profits) resulting from any delay in Delivery or collection or failure to deliver or collect within any agreed time period or as a result of Late Cancellation under Condition 2.7.
- 3.16) If for any reason the Customer does not accept Delivery of or release for collection any of the Goods within 30 minutes of the Company's arrival at the Discharge Point, the Company reserves the right to charge the Customer the Waiting Time Charge.
- 3.17) The Customer acknowledges the Company's right to supply a quantity of Goods which is within a reasonable tolerance of the quantity specified in the Quotation or Order Confirmation. The quantity and specification of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity and specification received by the Customer on Delivery.
- 3.18) Given the nature of the Goods, the Customer will be deemed to have accepted the Goods as being in accordance with the Contract on signature of the delivery docket or on Delivery, whichever is the earlier and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 3.19) At the anticipated time of Delivery the Customer shall ensure that an authorised person is present at the agreed Discharge Point to accept the Goods and to sign the delivery docket. Any signature should be legible and accompanied by a legible printed name.
- 3.20) By signing the delivery docket the Customer:
- a) acknowledges that the description set out on such delivery docket describes the Goods required by the Customer;
 - b) authorises any addition to the Goods of any materials including water and shall record this on the delivery docket;
 - c) confirms the times of arrival of the truck at the agreed Discharge Point and of completion of discharge; and
 - d) acknowledges receipt of Delivery.
- 3.21) Where the Company complies with a request from the Customer or from a person reasonably believed by the Company to be acting on his behalf for any variation to the Goods the Customer shall accept any consequential variation in the properties and/or the constituents of such Goods.
- 3.22) The Company may at its absolute discretion change the source of the materials included in any mix of the Goods without notice to the Customer, excluding where the Quotation or Order Confirmation records that the mix is Customer-designed.
- 3.23) Full legal, beneficial and equitable 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.
- 3.24) Risk in the Goods shall pass on Delivery.
- 3.25) Until full legal, beneficial and equitable title to and property in the Goods passes to the Customer:
- a) the Customer shall hold the Goods on a fiduciary basis as the Company's bailee;
 - b) the Customer shall store the Goods and shall insure them, without any charge to the Company, and not tamper with any identification upon the Goods 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 11.1 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 3.25 the Company, its employees, agents and sub-contractors 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 legal, equitable and beneficial title to and property in the Goods has not passed to the Customer; and
 - f) the Company hereby authorises the Customer to use the Goods in the normal course of the Customer's business. This right shall automatically cease on the occurrence of any event set out in Condition 11.2 and/or if any sum owed to the Company by the Customer is not paid when due.
- 3.26) The Company shall be entitled at its discretion to make Delivery of the Goods by instalments and to invoice the Customer for each instalment individually. 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 repudiated or to refuse to accept subsequent instalments.

4) Price and Payment

- 4.1) Unless otherwise agreed by the Company in writing the price for the Goods and/or Additional Services and/or any charges set out in the Supplementary Charges List shall be the price set out in the Quotation and/or the Supplementary Charges List as at the date of Delivery.
- 4.2) The Company reserves the right, by giving notice to the Customer at any time before Delivery, to amend the Quotation and/or charges set out in the Supplementary Charges List to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (including, without limitation, any increase in the costs of labour, fuel, materials, or other costs of manufacture or supply), any change in the quantities of the Goods and/or Additional Services requested by the Customer or any change in the Delivery dates or location for the Goods and/or Additional Services 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.
- 4.3) Save where included as an Additional Service, unless otherwise agreed in writing the prices for the Goods shall include costs or charges in relation to Delivery but are not inclusive of the charges set out in the Supplementary Charges List. For the avoidance of doubt, this does not affect the Company's right to charge for Delivery related charges as set out herein.
- 4.4) The price for the Goods, Additional Services and/or set out in the Supplementary Charges List shall be exclusive of value added tax and any other taxes and duties or levies all of which amounts the Customer will pay in addition when it is due to pay for the Goods and/or Additional Services and/or the Supplementary Charges List.
- 4.5) The Company reserves the right to levy the Part Load Charge, where the Customer orders less than a full load. Details of load capacities can be obtained from the Company upon request.
- 4.6) The Company reserves the right to make a charge for Delivery of the Goods and/or the Additional Services on the request of the Customer at a specific time or outside normal working hours.
- 4.7) Except where otherwise agreed by the Company or where the Customer is a credit account holder, payment of the price for the Goods and/or Additional Services (plus any additional charges in the Supplementary Charges List that have been incurred or are anticipated by the Company to be incurred on or before Delivery) is due before dispatch of the Goods and/or completion of Additional Services. Any other charges are due as they are incurred (unless agreed otherwise with the Customer). Time for payment of the Goods and/or Additional Services, and any additional charges in the Supplementary Charges List shall be of the essence.
- 4.8) The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise.
- 4.9) The Company shall be entitled to apply any amount due to the Customer under this or any other agreement in or towards payment of any sum owing by the Customer to the Company in relation to any matter whatsoever.

- 4.10) 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 all sums then owing 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 suspending deliveries of the Goods and/or provision of the Additional Services; and/or
 - b) require the Customer to pay for Goods prior to their dispatch or collection from the Company's place of business; and/or
 - c) charge the Customer
 - i) interest calculated on a daily basis on all overdue amounts (both before and after judgement) until actual payment at the rate of 5% above base lending rate from time to time of HSBC UK Bank PLC until payment is made in full; and
 - ii) the cost of obtaining judgement or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.

4.11) Any credit facility given to the Customer by the Company may be altered or withdrawn by the Company at any time.

5) Warranty of Quality and use of Goods

5.1) The Company gives no warranty and/ or guarantees that Goods will achieve a particular strength or will be fit for any particular purpose unless this has been expressly agreed in writing between the parties to the Contract. The Company shall not warrant, coordinate, be responsible and/ or liable for:

- a) In situ tests on any Goods once used unless such testing has been agreed in advance of use by the Company in writing;
- b) Ensuring the observance of all proper safeguards and precautions against accidents in connection with the use of the Goods, and for ensuring its use by authorised persons only;
- c) Compliance by the Customer with the Statutory Requirements and any insurances made necessary thereby;
- d) Final determination of the suitability of the Goods for any specific use, which is the Customer's responsibility and for which the Customer assumes all risk and liability;
- e) Making significant decisions on the quality, installation, and use of Goods in place of the Customer obtaining appropriate independent advice; or
- f) natural defects in the Goods to which the Goods are liable where they comprise or contain natural, marine-dredged or quarried materials and which are present in the Goods as a result.

5.2) Subject to Conditions 5.3 and 5.4, if the Customer establishes to the Company's reasonable satisfaction that there is a defect in the Goods or there is some other failure in relation to the conformity of the Goods with the Contract and such non-conformity is the fault of the Company (such goods shall be referred to as the "Defective Goods") then the Company shall at its option, at its sole discretion and within a reasonable time:

- a) subject to the reasonable co-operation of the Customer, separate and/or break up as necessary and remove the Defective Goods free of charge to the Customer and replace such Defective Goods with Goods which are in all respects in accordance with the Contract (including the cost of transporting the Goods to and from the Customer for that purpose); or
- b) issue a credit note to the Customer in respect of the whole or part of the Contract price of such Defective Goods plus the reasonable costs of separating and/or breaking up as necessary and removing the Defective Goods, and performance of either one of the above options shall constitute an entire discharge of the Company's liability under this warranty and shall be the Customer's sole and exclusive remedy.

5.3) The Company shall be under no liability under the warranty at Condition 5.2 above:

- a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether given orally or in writing), misuse or alteration of the Goods without the Company's approval; and/or
- b) if the total price for the Goods and/or the Additional Services and/or any additional charges in the Supplementary Charges List have not been paid by the due date for payment; and/or
- c) for any Goods manufactured or appropriated to the Contract in accordance with any specification, instruction or recommendation made to the Company by the Customer; and/or
- d) for any Additional Services performed in accordance with the Customer's instructions; and/or
- e) in respect of any type of defect, damage or wear specifically excluded by the Company by notice in writing; and/or

- f) in circumstances where any materials including admixtures, pigments, fibres or water are added to the Goods or there has been any other unauthorised alteration or addition to the Goods by the Customer or its agents without the prior written approval of the Company; and/or
 - g) an error on the part of the Customer in its use of the Goods; and/or
 - h) continued use by the Customer after it becomes aware of a defect; and/or
 - i) an Event of Force Majeure.
- 5.4) If the Customer believes that there is some defect or other non-conformance of the Goods and/or the Additional Services with the Contract then the Customer shall give:
- a) written notification of such alleged defect to the Company which notice shall include details of such suspected non-conformance or defect and the precise location of where the Goods were placed or used as soon as such defect or non-conformance is suspected or discovered or ought to have been discovered but in any event within 40 days after Delivery of the Goods or within 48 hours if the volume of Goods delivered do not correspond to the volume shown on the delivery docket; and
 - b) the Company a reasonable opportunity to inspect the relevant Goods or the location at which the Additional Services were performed and, if so requested by the Company and, promptly return to the Company or such other person nominated by the Company a sample of the Goods within 14 days, carriage paid by the Customer, for inspection, examination and testing and/or otherwise permit the Company to have access to the Goods at the Customer's premises or other location where they may be for such purposes and/or permit the Company access to the site where the Additional Services were performed for such purposes.
- 5.5) The warranties set out in the Contract are the only warranties which shall be given by the Company and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6) Provision of Services**
- 6.1) Where the Company is to perform Additional 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 in accordance with the demands of any applicable legislation and as the Company shall reasonably require.
- 6.2) The relevant element of the Contract price relating to the Additional Services shall be due and payable before such Additional Services are carried out.
- 6.3) The Additional Services will be deemed to be complete:
- a) when they have been completed to the Company's satisfaction; or
 - b) if the Company is available to perform the Additional Services but is prevented from doing so by reason of the lack of relevant assistance from the Customer; and/or
 - c) if the Company is available to perform the Additional Services but is prevented from doing so by reason of the condition of the Customer's premises on the site at which the Additional Services are to be provided and/or the facilities at or the services available therein at the time agreed for the provision of the Additional Services.
- 7) Exclusion and Limitation of Liability**
- 7.1) The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with Defective Goods shall be limited to the lower of 5 times the price of the Defective Goods or £200,000 (two hundred and fifty thousand pounds).
- 7.2) The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, in respect of all claims not subject to Condition 7.1, arising in connection with the performance or contemplated performance of the Contract shall be limited to £20,000 (twenty thousand pounds).
- 7.3) The Company shall not be liable to the Customer (whether in contract, tort, negligence, breach of statutory duty or otherwise) however arising (whether relating to the Goods, Additional Services or otherwise) for:
- a) any loss of profit, wasted costs or other economic loss (direct or indirect); and/or
 - b) any loss or damage or liability which the Customer incurs due to delay in its works or project (direct or indirect);
 - c) any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused); and/or
 - d) any purported liquidated damages.
- 7.4) Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence, or for fraudulent misrepresentation.

8) Customer's Indemnity

- 8.1) The Customer irrevocably and unconditionally agrees to indemnify the Company, its employees, subcontractors and agents in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including without limitation legal and other professional advisers' fees and all consequential and economic loss (including without limitation loss of profit, future revenue, reputation or goodwill and anticipated savings) whether direct or indirect made 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 the Contract:
- a) the production, supply and sale of the Goods by the Company in accordance with the Customer's specifications or other data or information furnished or instructions given by the Customer; and/or
 - b) any breach by the Customer of its obligations under the Contract; and/or
 - c) 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 under the Contract.

9) Subcontracting, Assignment and Third-Party Rights

- 9.1) The Customer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Company.
- 9.2) The Company may assign, charge, subcontract or transfer the Contract or any part of it to any person or Group Company. The Customer irrevocably consents to novation of the Company's rights and obligations pursuant to the Contract to any Group Company.
- 9.3) A Group Company may enforce any term of the Contract. Save for the Group Companies, no other person who is not a party to the Contract (including any employee, officer, agent, representative or sub-contractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 (the "Act") or otherwise) to enforce any term of the Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Company and the Customer which agreement must refer to this Condition 9.3.
- 9.4) Even if a person who is not a party to the Contract has a right to enforce any term of the Contract by virtue of Section 1 of the Act, the parties may, notwithstanding Section 2(1) of the Act, vary or cancel the Contract by agreement between them without requiring the consent of such third party.

10) Force Majeure

- 10.1) The Company has no liability, and reserves the right to suspend or cancel the Contract in whole or in part (without liability to the Customer), if it is prevented from or delayed in the carrying out of its obligations under the Contract due to any circumstances outside the control of either party including, without limitation, acts of God, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strikes, lock outs or other industrial action (whether of the Company's own employees or others), failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services (an "Event of Force Majeure") provided that, if the Event of Force Majeure continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 10.2) No claims will be admitted for stoppages through causes outside the Company's control, including Force Majeure or unforeseen ground conditions nor shall the Company be responsible for the cost or expense of recovering any Goods from unforeseen ground conditions.

11) Suspension and Termination

- 11.1) The Company may at its absolute discretion terminate the Contract on 21 days' notice in writing to the Customer without reason.
- 11.2) The Company may immediately suspend or terminate the Contract on written notice to the Customer where:
- a) the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy or which it fails to remedy within a period of 14 days from notification by the Company;
 - b) the Customer is insolvent within the meaning of section 113 of the Housing Grants, Construction and Regeneration Act 1996 (as amended or re-enacted); or
 - c) any sum payable by the Customer under the Contract is not paid within seven days of its due date for payment.
- 11.2) Notwithstanding any such termination or suspension in accordance with this Condition 11 the Customer shall pay the Company for all Goods and/or Additional Services delivered and carried out up to and including the date of suspension or termination.
- 11.3) Termination of the Contract for any reason shall be without prejudice to the rights and remedies of either party which may have accrued up to termination.

12) General

- 12.1) 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.
- 12.3) If at any time any one or more of the Conditions or any part of them or any other part of the Contract is held to be or becomes void or otherwise unenforceable for any reason under the Statutory Requirements, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions and the remainder of the Contract shall not in any way be affected or impaired as a result of that omission.
- 12.4) Any communication between the parties relating to the performance of the Contract and the obligations under it must be in writing and delivered by email (when delivery shall be deemed to be the time it is sent), or by hand (when delivery shall be deemed to be the day of delivery) or sent by pre-paid first class post (when delivery shall be deemed to be 48 hours after posting) to, in the case of the Company, the address set out above, and in the case of the Customer, to its registered address, or such change of address as shall be notified to either party by the other. All email communications may be to such email addresses as the parties agree.
- 12.5) The Contract sets out the entire agreement and understanding between the Customer and the Company in connection with the sale of the Goods and/or provision of the Additional 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 and/or provision of the Additional Services. The parties acknowledge that the Contract has not been entered into wholly or partly in reliance on, nor has either party been given, any warranty, statement, promise or representation by the other or on its behalf other than as expressly set out in the Contract. Each party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind the Contract which it might otherwise have had in relation to them.
- 12.6) The Contract and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 12.7) All disputes or claims arising out of or relating to the Contract shall be subject to the exclusive jurisdiction of the English and Welsh Courts to which the parties irrevocably submit.
- 12.8) Each unit of the Goods is sold as a separate unit and no failure by one or more units through any cause whatsoever, shall entitle the Customer to compensation or allowance for the loss of working time.
- 12.9) The Company shall be under no liability for compliance by the Customer with the Statutory Requirements including in respect of design, specification, installation, method, and discharge of Delivery, and the Customer accepts sole liability, responsibility for its compliance with and/ or warrants to the Company that it is compliant with the Statutory Requirements.
- 12.10) Either party may give written notice to the other party as soon as it becomes aware during the course of the Contract of any matter whatsoever that could involve a dispute relating to the terms of the Contract. Senior representatives shall then be nominated by the Company and the Customer who together shall try in good faith to resolve the dispute or difference. The Senior representatives may use whatever procedure they consider necessary and appropriate to try and resolve the dispute over a period of no more than 28 days from the date on which either party first gave notice of the dispute.
- 12.11) If at the end of that 28-day period, the dispute or difference has not been resolved then either party can exercise its contractual right to refer the difference or dispute arising under or in connection with the Contract to adjudication and the procedure set out in Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (or any amendment or re-enactment thereof for the time being in force) will apply. The specified nominating body to select an adjudicator shall be the Technology Construction and Solicitors' Association acting by its Chairman for the time being.
- 12.12) The parties shall comply forthwith with any decision of the adjudicator and as necessary shall submit to summary judgment and enforcement in respect of all such decisions.
- 12.13) The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 12.14) Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.