

BIG FOOT SYSTEMS LTD
TERMS OF TRADING

The following terms govern any contract between the Company and any customer for the supply of Products by the Company.

1. Definitions and interpretation

1.1. The definitions in this clause have the following meaning in these Terms of Trading:

"Bespoke Products" means Products which are created or compiled/put together following the provision of the Design and Specification services and/or as part of a Project;

"Company" means Big Foot Systems Ltd (company registration number 03389009), whose registered office is Apex Way, Hailsham, East Sussex BN27 3WA, and/or any of its associated companies;

"Contract" means any contract made between the Company and the Customer for the sale of the Products, incorporating these Terms of Trading;

"Customer" means the person, firm or company who wishes to purchase the Products, as identified in the Order;

"Customer Information" means information provided by a Customer or a Distributor;

"Design and Specification" means the design and specification created by the Company on behalf of the Customer using the Customer Information as part of a Project, under the terms set out at Appendix A to these Terms of Trading if appended to the Quote and confirmed in an Order Confirmation;

"Distributor" means an appointed distributor either by the Company or a Customer, in connection with the sale or purchase of the Products and/or the Services;

"Effective Date" means the date that this Agreement takes effect, as set out in the Order Confirmation;

"Intellectual Property Rights" means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights, rights in software, topography rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world now or in the future;

"Materials" means any documents, drawings, plans, written specification details, discs or any information regarding the Project, Design and Specification, Product(s) and/or the Intellectual Property Rights of the Company, in whatever media or format;

"Order" means any order placed by the Customer for purchase of the Products, which is subject to these Terms of Trading;

"Order Confirmation" means the confirmation of the Order placed by the Customer, sent by the Company by email or any other format, in accordance with these Terms of Trading;

"Price" means the price of the Products payable by the Customer to the Company, as confirmed in the Company's Order Confirmation;

"Price List" means the price list of the Company, provided to the Customer in relation to the Products, in accordance with these Terms of Trading;

"Products" means either the pumps, air-conditioning accessories, Big-Foot or Xtra products or any other products that the Company agrees to sell to the Customer, as identified in the Order Confirmation;

"Project" the design and specification project relating to the provision of Bespoke Product(s) carried out by the Company on behalf of the Customer, as detailed in these Terms of Trading and/or Appendix A;

"Quotation Price" means the price contained within the Company's Quote for the provision of Bespoke Products to be sold to the Customer, including any Design and Specification services to be provided by the Company on behalf of the Customer as part of the Project;

“Quote” means the quote produced by the Company, provided to the Distributor for onward communication to the Customer, or to the Distributor or Customer direct, in relation to the provision of Bespoke Products (as detailed within the Quote) following the creation of a Design and Specification, in accordance with these Terms of Trading.

“Standard Product(s)” means Product(s) of the Company that are standard and ready for purchase from the Company by the Customer (or a Distributor), in accordance with these Terms of Trading, where no Design and Specification has been carried out in respect of those Products.

- 1.2. All headings are for ease of reference only and shall not affect the construction of this Contract.
- 1.3. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4. Words in the singular include the plural and in the plural include the singular.
- 1.5. A reference to one gender includes a reference to the other gender.
- 1.6. The terms of this Contract shall prevail over any other terms which are inconsistent (whether directly or indirectly) with this Contract, and the Company supplies Products only on the basis that the terms of this Contract override any other terms referred to by the Customer.
- 1.7. Where Design and Specification services are to be provided by the Company, this shall be specified in the Order Confirmation and the relevant parts of these Terms of Trading (including Appendix A) shall apply to the provision of the Design and Specification by the Company to the Customer as part of the Project.
- 1.8. These Terms of Trading shall apply to the sale and purchase of all Products. Where Design and Specification services are provided in order to create Bespoke Products, then these Terms of Trading shall apply to the sale of those Bespoke Products as though they are ‘Products’ as detailed in these Terms of Trading unless any terms specifically relate to ‘Bespoke Products’ in which case terms relating to Bespoke Products shall prevail to the extent there is any inconsistency.

2. Order for Products and Description

- 2.1. Subject to any variation under Clause 2.2 below, the Contract between the Company and the Customer shall be on these Terms of Trading (including any terms or conditions which the Customer purports to apply under any purchase Order, confirmation of order, specification or other document). No terms or conditions endorsed on, delivered with or contained in the Customer’s purchase Order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.2. These Terms of Trading apply to all the Company’s sales and any variation to these Terms of Trading and any representations about the Products shall have no effect unless expressly agreed in writing and signed by the Managing Director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this clause shall exclude or limit the Company’s liability for fraudulent misrepresentation.
- 2.3. The Company shall provide the Customer with its Price List, together with any updates to that Price List on an ongoing basis. When a new Customer makes an enquiry with the Company for purchasing Products, the Company shall issue a Price List to the Customer for the Products to be purchased, subject to these Terms of Trading. If the Customer wishes to purchase the Products detailed in the Company’s Price List, the Customer shall issue a formal Order to the Company, which shall be deemed to be an offer by the Customer to buy the Products subject to these Terms of Trading. The Customer shall ensure that the terms of its Order and any applicable specification are complete and accurate.
- 2.4. No Order placed by the Customer shall be deemed to be accepted by the Company until the Company has issued written acknowledgement of the Order by way of an Order Confirmation, or (if earlier) the Company delivers the Products.

- 2.5. An Order Confirmation is valid for a period of 30 days from its date, provided that the Company has not previously withdrawn it.
- 2.6. In the absence of a written undertaking to the contrary, the Company may vary or modify the design specification or finish of the Products without prior notice to the Customer.
- 2.7. The quantity and description of the Products shall be as set out in the Company's documentation including any Design and Specification documents if applicable, and/or any Price List provided to the Customer by the Company. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or its website, are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract and sales under this Contract shall not be a sale by sample.
- 2.8. The unit sizes, weights, dimensions, quality and other descriptions of the Products are subject to change and the Company shall not be responsible for any slight variations of the unit sizes, weights, dimensions, quality and other descriptions of the Products if such differences are less than 5% of the total description of the Products ("**Tolerances**").

3. **Prices**

- 3.1. The Price for the Products will be:
 - 3.1.1. the Price as stated in the Order Confirmation of the Company;
 - 3.1.2. the Quotation Price (if applicable) for Bespoke Products; or
 - 3.1.3. if no Price is stated on the Order Confirmation then the Price will be the Price for the Product as stated in the Company's up-to-date Price List for Standard Products.
- 3.2. Unless otherwise stated all Prices are exclusive of VAT, or any other taxes or charges not specifically quoted by the Company. In addition to the quoted Price, the Customer will be liable to meet any additional cost of the Company resulting from changes in costs of supplying the Products between the date of the Price List provided by the Company and the date of supply, including (but not limited to) the increase in the cost of labour, materials and transport.
- 3.3. Where supply by the Company involves export from the UK, the Products will be sold CIF (as defined in the Incoterms 2010), unless otherwise agreed and confirmed in the Order Confirmation (in accordance with these Terms of Trading) and the Customer will pay the cost of packing and any other charges accruing at the time of dispatch of the Products as identified in the Order Confirmation.
- 3.4. Where the total Order value is less than £100, the Company may charge any additional handling charge not exceeding 25% Order value.

4. **Delivery and Performance**

- 4.1. All dates quoted for delivery of the Products are estimates only, and time shall not be of the essence.
- 4.2. In the event of deferment or non-acceptance of delivery after notification to the Customer that the Products are ready for dispatch, the Company may levy a demurrage charge of 2.5% of the invoice value for the Products per month in which such a deferment takes place (being an agreed value of liquidated damages for such delays by the Customer) and the Company may charge the Customer for any relevant delivery costs for the Products.
- 4.3. Unless otherwise agreed in writing by the Company or set out in the Order Confirmation, delivery of the Products shall take place at the Company's place of business. The Customer shall take delivery of the Products by the delivery date detailed in the Order Confirmation once the Company gives the Customer notice that the Products are ready for delivery.
- 4.4. Subject to the other provisions of these Terms of Trading, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 60 days.

- 4.5. If for any reason the Customer fails to accept delivery of any of the Products when they are ready for delivery, or the Company is unable to deliver the Products on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 4.5.1. risk in the Products shall pass to the Customer (including for loss or damage caused by the Company's negligence);
 - 4.5.2. the Products shall be deemed to have been delivered; and
 - 4.5.3. the Company may store the Products until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.6. The Company may deliver the Products by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 4.7. The quantity of any consignment of Products as recorded by the Company on dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 4.8. The Company shall not be liable for any non-delivery of Products (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within three (3) days of the date when the Products would in the ordinary course of events have been received.
- 4.9. Any liability of the Company for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.
- 4.10. In accordance with the CIF Incoterms, and subject to clause 4.11, the Customer shall be responsible for obtaining, at its own cost, such import licences and other consents in relation to the Products as are required from time to time to take effect from the time the Customer takes delivery of the Products in accordance with the CIF Incoterms and, if required by the Company, the Customer shall make those licences and consents available to the Company prior to the relevant shipment.
- 4.11. If the contract for sale is ExWorks (as confirmed in the Order Confirmation), the Customer shall be responsible for obtaining, at its own cost, such import licences and other consents in relation to the Products as are required from time to time and, if required by the Company, the Customer shall make those licences and consents available to the Company prior to the relevant shipment.
- 5. Risk**
- 5.1. Where delivery of the Products is CIF, the risk in the Products shall pass to the Customer at the time that the Products are on board any vehicle transporting the Products from the Company's premises.
- 5.2. Where delivery of the Products is to be made to a designated place (as set out in the Order Confirmation), the risk shall pass to the Customer upon arrival at such place immediately prior to unloading. The Company will replace or repair at its option any Products damaged in transit up to the point of delivery in accordance with the Contract provided that the Customer gives written notice of damage within three (3) days of receipt of the Products. The Company will not have any further liability outside of the provisions of this Clause 5.2 in respect of Products damaged in transit.
- 5.3. Where delivery of the Products is ExWorks (as confirmed in the Order Confirmation), the risk in the Products shall pass to the Customer at the commencement of loading onto any vehicle transporting the Products from the Company's premises.
- 6. Payment**
- 6.1. Unless otherwise specified by the Company in writing, payment is due as follows:

- 6.1.1. For account Customers (where Customers hold an account upon the written approval of the Company), payment is due within the credit period agreed between the parties in writing and detailed on the Company's statement, unless the Customer is selling the Products on, where payment is due within the credit period agreed between the parties in writing (and confirmed in the Order Confirmation) and detailed on the Company's invoice or statement.
 - 6.1.2. Customers who do not hold an account with the Company will be required to make payment upon delivery of the Products in cleared funds, in advance of delivery of the Products against a pro-forma invoice, as confirmed by the Company at the time the Customer places its Order for the Products with the Company and set out in the Order Confirmation.
- 6.2. Time for payment shall be of the essence.
- 6.3. No payment shall be deemed to have been received until the Company has received full and cleared funds.
- 6.4. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 6.5. The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 6.6. If the Customer fails to pay the Company any sum due pursuant to the Contract, the Company shall be entitled to charge interest to the Customer on such sum from the due date for payment at the annual rate of 4% above the London Interbank Offered Rate ("LIBOR") from time to time in force, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.7. All payments by the Customer shall be payable in the currency specified by the Company in the Price List, or in the Order Confirmation (the Order Confirmation taking precedence in the event of any conflict).
7. **Title**
 - 7.1. The Products are at the risk of the Customer from the time the Products are made available for delivery to the Customer in accordance with these Terms of Trading.
 - 7.2. Title in the Products supplied by the Company shall remain vested in the Company until the Customer has paid in full (in cash or cleared funds) all sums due to the Company in respect of:
 - 7.2.1. for Products contained in a relevant Order; and
 - 7.2.2. for any other sums which are or which become due to the Company from the Customer at any time.
 - 7.3. The Customer may not resell any Products supplied by the Company before payment in full is made to the Company and once ownership therefore passes, and in the event that the Products are resold before such payment has been made by the Customer to the Company, the Customer shall hold all proceeds of the sale of such Products on trust for the Company.
 - 7.4. Until ownership of the Products has passed to the Customer, the Customer shall:
 - 7.4.1. store the Products (at no cost to the Company) separately from all other products of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 7.4.2. not deliberately destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and

- 7.4.3. maintain the Products in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.
- 7.5. The Customer may resell the Products before ownership has passed to it solely on the following conditions:
- 7.5.1. any sale shall be effected in the ordinary course of the Customer's business at full market value; and
- 7.5.2. any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 7.6. The Customer's right to possession of the Products shall terminate immediately if:
- 7.6.1. the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- 7.6.2. the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- 7.6.3. the Customer encumbers or in any way places a charge over any of the Products.
- 7.7. The Company shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company.
- 7.8. The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 7.9. Where the Company is unable to determine whether any Products are the Products in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all Products of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- 7.10. On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this Clause 7 shall remain in effect.
8. **Warranty and Liability**
- 8.1. Provided that the Customer has paid in full for the Products not later than the dates due for payment as set out in Clause 6 above, and has properly stored and maintained the Products in accordance with any instructions given by the Company, and has allowed full access to the Products for inspection and testing, the Company's obligations under Clause 8.4 below shall be discharged by the Company replacing, or crediting, without charge any Products of its manufacture which have become faulty by reason of defective materials or workmanship (other than for minor defects) within the period from the date of delivery of the Products by the Company to the Customer, as confirmed by the Company at the time of purchase ("Warranty Period"). If the Company so requests, the Customer shall, at the Company's expense, return the faulty Products

or the part of such Products that are faulty to the Company or its nominated Distributor (as notified by the Company), prior to such replacement.

- 8.2. The Company shall not in any circumstances be liable for any consequential loss occasioned by any use of or defect in the Products supplied, in accordance with Clause 8.11.2.
- 8.3. The Company shall not be responsible for damage or loss of any kind whatsoever to any property or persons howsoever arising from the use of the Products or otherwise in connection with the installation or erection of the Products, unless provided for under these Terms of Trading.
- 8.4. The Company warrants that (subject to the other provisions of these Terms of Trading) on delivery, the Products shall:
 - 8.4.1. be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (or any superseding legislation);
 - 8.4.2. be reasonably fit for any particular purpose for which the Products are being bought if the Customer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgment of the Company.
- 8.5. The Company shall not be liable for a breach of the warranties in Clause 8.4 unless:
 - 8.5.1. the Customer gives written notice of the defect to the Company within five (5) days from the date of delivery;
 - 8.5.2. the Customer gives written notice of the defect to the Company within five (5) days of the time when the Customer discovers or ought to have discovered the defect; or
 - 8.5.3. the Company is given a reasonable opportunity after receiving the notice of examining such Products and the Customer (if asked to do so by the Company) returns such Products to the Company's place of business at the Company's cost for the examination to take place there.
- 8.6. The Company shall not be liable for a breach of the warranties in Clause 8.4 if:
 - 8.6.1. the Customer makes any further use of such Products after giving such notice; or
 - 8.6.2. the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; or
 - 8.6.3. the Customer alters or repairs such Products without the written consent of the Company.
- 8.7. If the Company complies with Clause 8.6 it shall have no further liability for a breach of the warranties in Clause 8.4 in respect of such Products.
- 8.8. Subject to any other clause set out in these Terms of Trading, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 - 8.8.1. any breach of these Terms of Trading;
 - 8.8.2. any use made or resale by the Customer of any of the Products, or of any product incorporating any of the Products; and
 - 8.8.3. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 8.9. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

- 8.10. Nothing in these Terms of Trading excludes or limits the liability of either party:
- 8.10.1. for death or personal injury caused by that party's negligence; or
 - 8.10.2. under section 2(3) Consumer Protection Act 1987 (where applicable); or
 - 8.10.3. for any matter which it would be illegal for the parties to exclude or attempt to exclude its liability; or
 - 8.10.4. for fraud or fraudulent misrepresentation.
- 8.11. Subject to Clause 8.10:
- 8.11.1. the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price or Quotation Price (as applicable) as detailed in an Order Confirmation or Quote (as applicable); and
 - 8.11.2. the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 8.12. Any sales of goods by the Company to the Customer, other than the Products detailed in the Order Confirmation, shall not be subject to these Terms of Trading. Any warranties contained in these Terms of Trading apply to the Products only and not to any other goods sold under an Order by the Company to the Customer under an Order Confirmation.
9. **Third Parties**
For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provisions of this Contract, this Contract is intended to be between the Company and the Customer and is not intended to, and does not, give any person who is not a party to it any right to enforce its provisions.
10. **Intellectual Property Rights**
- 10.1. Where work is carried out by the Company to the Customer's specifications (including Bespoke Products), drawings or other description, the Customer shall indemnify the Company against all claims in respect of which the Company may be liable and all costs and expenses incurred by the Company in respect of such claims arising out of an infringement or alleged infringement of any patent, registered design or other Intellectual Property Right.
- 10.2. The Customer acknowledges that the Company owns, or has licensed to it, all Intellectual Property Rights in and to the Products, including but not limited to the designs, drawings, pictures, technical briefs, know-how and descriptions for the Products, together with the trade marks in connection with the Products.
- 10.3. The Customer further acknowledges that it has no rights in or to the Intellectual Property Rights in the Products (or Bespoke Products) or any designs, drawings, pictures, technical briefs, know-how or descriptions for the Products (or Bespoke Products) and it shall not be entitled to use any part of any specification or description document that refers to, or describes, any of the Intellectual Property Rights belonging to the Company or disclose details of such Intellectual Property Rights to any other third party.
- 10.4. The Customer shall not deface, change and/or modify any of the packaging for the Products and/or any markings on the Products that may exist, including (but not limited to) any trade marks or other logos or markings on the packaging of the Products and/or the Products themselves (or the Bespoke Products).
11. **Force Majeure**
The Company reserves the right to delay the date of delivery or the anticipated date for providing any services to the Customer, or to cancel the Contract or reduce the volume of Products ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying

on of its business due to circumstances outside of the Company's reasonable control, including (but not limited to) war, invasion, act of foreign hostility (whether declared or not), act of terrorism (whether actual or threatened), national emergency, civil unrest, riot, disturbance or commotion, fire, flood, explosion, epidemic, any statute, rule or regulation, order or requisition issued by any competent authority, strike, lockout, breakdown of plant, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or any cause beyond the Company's reasonable control. If the event in question continues for a continuous period in excess of three (3) months, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

12. **Termination**

12.1. This Contract shall commence upon the Company accepting the Order by way of forwarding to the Customer its Order Confirmation in accordance with these Terms of Trading and shall continue until the performance of the parties' respective obligations have been completed under the Agreement.

12.2. Notwithstanding Clause 12.1, this Contract can be terminated earlier by the Company immediately on notice in writing to the Customer if the Customer:

12.2.1. commits a material breach of this Contract which is not remedied (if capable of remedy) within 30 days from receiving notice of such breach from the Company;

12.2.2. passes a resolution or makes a determination for it to be wound up, has a winding-up order or bankruptcy order made against it, has an administrator or administrative receiver appointed, ceases or suspends payment of its debts or becomes unable to pay its debts within the meaning of s123 of the Insolvency Act 1986, or ceases (or threatens to cease) to carry on business.

12.3. On termination or expiry of this Contract for any reason and subject to any other rights or remedies provided in this Contract that have accrued before termination or expiry, neither party shall have any further obligations to the other under this Contract.

13. **General**

13.1. **Severance**

Any provision of this Contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this Contract.

13.2. **Assignment**

13.2.1. The Company may assign this Contract or any part of it to any person, firm or company.

13.2.2. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13.3. **Notices**

13.3.1. All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax, or by email for the purposes of communicating Price Lists and/or Order Confirmations from the Company to the Customer:

13.3.1.1. (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or

13.3.1.2. (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.

13.3.2. Communications shall be deemed to have been received:

- 13.3.2.1. if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 13.3.2.2. if delivered by hand, on the day of delivery; or
- 13.3.2.3. if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

13.3.3. Communications addressed to the Company shall be marked for the attention of the Managing Director.

13.4. **Confidentiality**

13.4.1. **Confidential Information.** Each party (**Recipient Party**) shall, and shall procure that its employees agents, external advisers and representatives (together, **Representatives**) shall:

- 13.4.1.1. keep secret and confidential the Confidential Information of the other party (**Disclosing Party**) using at least the same degree of care in maintaining its secrecy as it uses in maintaining the secrecy of its own Confidential Information, but in no event less than a reasonable degree of care;
- 13.4.1.2. not disclose the Confidential Information of the Disclosing Party in whole or in part to any other person without the Disclosing Party's prior written consent, save to its Representatives to the extent necessary to implement the provisions of this Contract;
- 13.4.1.3. use reasonable endeavours to procure that each of its Representatives shall keep secret and treat as confidential the Confidential Information of the Disclosing Party;
- 13.4.1.4. use reasonable endeavours to return (or destroy at its own election) all copies, notes, packages, diagrams, computer memory media and all other materials containing any portion of the Confidential Information to the Disclosing Party upon its request and in any event on termination of this Contract and not retain any copies, extracts or other reproductions in whole or in part of the Confidential Information (except to the extent required by any applicable laws or governing body).

13.4.2. **Exceptions.** The obligations of confidentiality in Clause 13.4.1 shall not apply to the Confidential Information of the Disclosing Party which:

- 13.4.2.1. the Recipient Party rightfully possessed before it received the information from the Disclosing Party as evidenced by written documentation;
- 13.4.2.2. subsequently becomes publicly available through no fault of the Recipient Party;
- 13.4.2.3. is developed by or for the Recipient Party independently of the Confidential Information; or
- 13.4.2.4. is required to be disclosed by law.

13.5. **Waiver**

No waiver or forbearance by the Company (whether express or implied) in enforcing any of its rights under this Contract shall prejudice its right to do so in the future.

13.6. **Anti-Bribery Compliance.**

13.6.1 In connection with this Contract, the Customer shall:

- 13.6.1.1. comply with all applicable laws and regulations of the United Kingdom on anti bribery;

- 13.6.1.2. not offer, promise, give, accept or receive bribes or commit any Bribery Act offence;
- 13.6.1.3. disclose immediately all bribes, offers of bribes or suspicions of bribery or corruption;
- 13.6.1.4. use its best endeavours to prevent bribes (including by adopting adequate procedures in accordance with the Bribery Act);
- 13.6.1.5. use all reasonable endeavours to ensure that its employees, any third party agent, subcontractor, or other representative used in the performance of its obligations under the Contract are aware of and comply with the provisions set out in Clauses 13.6.1.1 to 13.6.1.4 above.

13.6.2 For the avoidance of doubt, any breach of this Clause 13.5 shall constitute a material breach for the purposes of Clause 12.2.

13.7. **Modern Slavery**

13.7.1 The parties agree to comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and shall:

- 13.7.1.1 have and maintain throughout the term of this Contract its own policies and procedures to ensure its compliance; and
- 13.7.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

13.7.2 Failure to comply with this Clause 13.7 may result in the immediate termination of this Contract.

14. **Law and Jurisdiction**

These Terms of Trading shall be governed by English Law (in relation to contractual or non-contractual matters) and the courts of England or Wales shall have exclusive jurisdiction in respect of any dispute or whatever nature arising out of or in connection with these Terms of Trading (in relation to contractual or non-contractual matters).

Terms of Trading

Appendix A: Design and Specification / Project services

- A. When a Customer makes an enquiry for carrying out of a Project (either with the Company direct or through a Distributor), the Company shall issue a Quote for the performance of the Project, subject to the terms and conditions of this Appendix A to the Terms of Trading. The Terms of Trading shall apply to this Appendix A, but the Terms of this Appendix A shall prevail in respect of provision of Design and Specification services, to the extent that there is any inconsistency with the Terms of Trading.
 - B. If the Customer wishes to proceed with the performance of the Project as detailed in the Company's Quote, the Customer (or the Distributor) shall issue a formal Order to the Company for the commencement of the Project, which shall be deemed to be an offer by the Customer for the commencement of the Project, subject to the terms and conditions of this Agreement.
 - C. The Customer shall ensure that the terms of its Order and any applicable specification and/or details and Customer Information provided to the Company (either directly or via a Distributor) relating to the Customer's requirements are complete and accurate and not misleading in any way.
 - D. Any Quote is given on the basis that no contract shall come into existence until the Company despatches an Order Confirmation form either to the Customer or the Distributor.
 - E. Any Quote is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
 - F. The Company shall commence the Project following release of its Order Confirmation and shall design the Bespoke Products as part of the Design and Specification services as part of the Project and produce a design document for approval by the Customer ("**Design Approval**"), in accordance with this Appendix A and the Terms of Trading (as applicable). Once the Customer approves the designs as being fit for the purpose made known to the Company, the Design Approval document shall be used for the purposes of making the Bespoke Products. If the Customer wishes to proceed with purchasing Bespoke Products following provision of the Design and Specification and completion of the Project, then the Customer shall purchase those Bespoke Products in accordance with this Appendix A, such sale of Bespoke Products also being subject to the Terms of Trading (as applicable) (Bespoke Products being 'Products' for the purposes of the application of the Terms of Trading).
 - G. The Customer shall only be entitled to use the details contained in any Design and Specification (which shall include the Design Approval) for the purposes of installing the Bespoke Products in accordance with the Design and Specification and the terms of this Appendix A and not for any other purpose. The Customer acknowledges that it shall not be able to use the Design and Specification in any way for installing any other products (or procure a third party to do so) and that the Customer has no rights in or to the Intellectual Property Rights in the Design and Specification, Products and/or the materials detailing the Design and Specification and it shall not disclose details of such Intellectual Property Rights to any other third party other than for the purposes set out in this Appendix A.
1. **THE PROJECT**
- 1.1. Each party shall use its reasonable endeavours to complete their responsibilities in connection with the Project by such date as may be agreed between the parties and set out in the Order Confirmation.
 - 1.2. The Customer shall:

- 1.2.1. provide the Company (or procure that an authorised third party will provide the Company) with all relevant details relating to its requirements for the Bespoke Products in order for the Company to produce the Design Approval;
 - 1.2.2. ensure that any measurements, surface details, substrate specifications and/or structure information upon which the Bespoke Products are to be installed are accurate and sufficiently describe the basis upon which the Bespoke Products are to be installed for the purposes of the Design and Specification creation;
 - 1.2.3. obtain any relevant consents, permits, approvals and/or licences that may be required in order to have the Bespoke Products installed as set out in the Design Approval;
 - 1.2.4. warrant that the information the Customer provides to the Company (either directly to the Company or through the Distributor) is complete and that the Customer accepts that the Design Approval produced according to the Customer's information shall be suitable for its purposes.
- 1.3. The Company agrees to:
 - 1.3.1. provide the Services for the completion of the Design and Specification services (including the creation of the Design Approval) in accordance with this Appendix A and the Terms of Trading;
 - 1.3.2. carry out steps required to produce a Design Approval that can be used for the purposes of creating and installing the Bespoke Products on behalf of the Customer;
 - 1.3.3. use its reasonable endeavours to deliver the Design Approval to the Customer (either directly or through the Distributor) upon completion and in line with the agreed timeframes for delivery of the Design Approval as set out in the Order Confirmation.
- 1.4. The Customer acknowledges that the Design Approval produced is only for use with the Company's Bespoke Products sold through the Distributor and may not be suitable for use with any other products. The Company shall not be liable if the Customer attempts to use the details contained in the Design Approval with any products not approved by the Company in writing.
- 1.5. In the absence of a written undertaking to the contrary, the Company may vary or modify the Design Approval, together with any advice provided in the Design Approval and/or details relating to the Bespoke Products, without prior notice to the Customer.
- 1.6. Any quantities, descriptions, measurements and other details contained in the Design Approval (relating to the Bespoke Products or otherwise) are issued for the sole purpose of giving an approximate idea of the manner in which the Bespoke Products should be made and installed. The Customer and/or the Distributor should not make any alterations to the Design Approval (including, but not limited to, the dimensions used for the design and weightings anticipated in the Design Approval), or the manner in which it is intended for use in connection with the Bespoke Products and/or installation of the Bespoke Products (including, but not limited to, a change in design by the addition or removal of the Bespoke Products, or any other products, or parts thereof, or the change in weight, height or other measurements of any units or structures where the Bespoke Products shall be placed or on top of which the Bespoke Products are anticipated to be placed, as set out in the Design Approval).
- 1.7. Upon delivery of the completed Design Approval to either the Customer direct, or to the Distributor for onward delivery to the Customer, and/or completing delivery of the Bespoke Products as specified in a relevant Order of the Customer following provision of the Design Approval, by the Company in accordance with this Appendix A, the Project shall be deemed as completed ("**Project Completion**"). After Project Completion, if the Customer requires any additional services in connection with the Bespoke Products and/or the Design Approval then the Company shall be entitled to charge its relevant fees (at its normal charge out rates) for

any additional services, including (but not limited to) adjustments to be made to the Design Approval from changes in the Customer's requirements.

2. PROJECT WARRANTY AND LIABILITY

2.1. Each of the parties warrants that:

2.1.1. it has full power and authority to carry out the actions contemplated under this Appendix A;

2.1.2. the Project shall be completed in a professional manner, using reasonable skill and care and all reasonable endeavours to achieve the objectives of the Project;

2.1.3. all information, data and materials provided by either party to the other pursuant to this Appendix A and/or the Terms of Trading will be, to the best of its knowledge, accurate and complete in all material respects, and that party is entitled to provide the same to the other without recourse to any third party.

2.2. The Design Approval produced by the Company on behalf of the Customer will not, to the best knowledge of the Company, but without undertaking any searches, infringe any Intellectual Property Right of any third party or violate any applicable laws or regulations. This warranty shall not apply where:

2.2.1. the Design Approval has been modified by someone other than the authorised personnel of the Company;

2.2.2. the Customer has not used the Design Approval provided by the Company to the Customer;

2.2.3. the Design Approval has been combined with other designs, components, products or materials; or

2.2.4. the Design Approval has been used other than as specified by the Company.

2.3. The Company shall not be liable for the condition of any surfaces on which the Bespoke Product(s) are to be used and/or installed. The Customer and/or its authorised representative(s) is responsible for ensuring that the surface and/or substrate that the Bespoke Product(s) is intended to be used is structurally sound enough to take the intended weight and point loadings on the Bespoke Product(s) as indicated in the Design Approval and the Company shall not be liable for any damages or losses caused by the non-performance of the Bespoke Product(s) due to the installation on unsuitable surfaces and/or substrates or structures.

2.4. The Bespoke Product(s) shall be installed in accordance with the Design Approval and in line with any guarantees and recommendations of the manufacturer of the Bespoke Product(s) and/or the manufacturer of the roof / substrate and/or the recommendations of the Company. Specifically (but without limiting the generality of the foregoing), manufacturers of PVC membranes should advise the Customer separately on the susceptibility migration of plasticizers and specific recommendations should be adhered to by the Customer and/or its authorised representative(s) so that the roof guarantee is not affected. The Company shall not be liable for failure by the Customer (and/or the Distributor) to install the Bespoke Products and/or use the Design Approval in a manner contrary to this Appendix A and/or in a manner not anticipated by the Design Approval.

2.5. The Company shall not be liable for any inaccuracies in the Design Approval caused by the provision by the Customer or any other third party (including the Distributor) involved in the Project of inaccurate measurements, sizes, weightings of details on the proposed structure to be loaded included in the Customer Information. The Customer acknowledges that the Company undertakes the performance of the Project for the creation of the Design Approval on the basis of information provided to it by the Customer and/or other authorised third parties

and the Company shall therefore have no liability in connection with the information from which the Company uses for the creation of the Design Approval.

- 2.6. The Company shall not be liable for the incorrect installation of the Bespoke Product(s) where the Customer and/or an authorised third party installs the Bespoke Product(s) not in accordance to the Design Approval.
- 2.7. Except as set out in Clauses 2.1 and 2.2 of this Appendix A above, the Company makes no representation or warranty of any kind, whether express or implied, concerning the performance of the Project and/or the Design Approval, including their suitability for any purpose or the validity of any rights in them.
- 2.8. If the Company performs the Project (or any part thereof) negligently, then, if requested by the Customer, the Company will re-perform the relevant part of the Project, subject to Clause 8 of the Terms of Trading. The Customer's request must be made within 14 days of Project Completion.
- 2.9. The Company provides no warranty that any result or objective can be or will be achieved or attained at all or by the performance of the Project and/or creation of the Design Approval, whether stated in this Appendix A or elsewhere.
- 2.10. The Company shall not be liable in any way to the Customer in connection with any dealings that the Customer has with the Distributor or any other third party in connection with the Bespoke Products and/or the Design Approval.