

**HOLLAND PUBLISHING PLC (“the Company”)  
Conditions of Sale - (Business to Business)**

**The Buyer’s attention is drawn in particular to the provisions of Conditions 4.1, 7.3 – 7.6 and 8**

**1. INTERPRETATION**

1.1. In these conditions of sale (hereafter referred to as “the Conditions”), save where the context requires otherwise, the following expressions shall have the following meanings:

1.1.1. “Business Day” means any day which is not a Saturday, Sunday or public holiday in England or Wales;

1.1.2. “Buyer” means the person with whom the Company is contracting;

1.1.3. “Contract” means any contract between the Company and the Buyer for the sale and purchase of the Goods incorporating these Conditions;

1.1.4. “delivery” refers to:

- (a) (in respect of deliveries to a Buyer located within the United Kingdom) delivery to an address within the United Kingdom; and
- (b) (in respect of deliveries to a Buyer located outside of the United Kingdom) delivery to the Buyer’s nominated carrier within the United Kingdom;

1.1.5. “Goods” means any goods agreed to be supplied to the Buyer by the Company (including any part or parts of them); and

1.1.6. “United Kingdom” means mainland Great Britain and Northern Ireland.

1.2. Condition headings shall not affect the construction or interpretation of these Conditions.

1.3. Words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, and words importing whole shall be treated as including a reference to any part thereof.

**2. FORMATION OF CONTRACT**

2.1. Any order which is accepted by the Company in respect of the supply of Goods will be accepted only upon these Conditions. These Conditions shall override any contrary, different or additional terms or conditions (if any) submitted, proposed or stipulated by the Buyer whether in writing or orally and in whatever form and at whatever time and no addition, alteration or substitution of these Conditions will bind the Company or form part of any Contract unless they are expressly accepted in writing by a person authorised to sign on behalf of the Company.

2.2. Any order for the supply of Goods which is submitted to the Company by or on behalf of the Buyer shall be accepted entirely at the discretion of the Company. The Company shall not be deemed to have accepted any order unless it has issued to the Buyer the Company’s standard order confirmation form (“the Order Confirmation”).

2.3. These Conditions shall also apply to any quotation given by the Company to the Buyer. Any quotation is given on the basis that no Contract shall come into existence until the Company issues an Order Confirmation to the Buyer.

2.4. The acceptance by the Buyer of delivery of the Goods or (if earlier) the giving by the Buyer to the Company of any delivery instruction shall constitute unqualified acceptance by Buyer of these Conditions.

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- 2.5. In the event of any conflict between the Order Confirmation and these Conditions, the Order Confirmation shall prevail.
- 2.6. The Buyer shall (at its own cost) provide the Company with all reasonable assistance to enable the Company to apply for credit insurance in respect of any Contract.
- 2.7. If:
- 2.7.1. it is not possible for the Company to obtain credit insurance in respect of any order placed by the Buyer; or
- 2.7.2. credit insurance in respect the Buyer or in respect of any Contract is withdrawn,
- the Company shall notify the Buyer and shall be entitled to suspend all further deliveries of the Goods to the Buyer without liability to the Buyer.
- 2.8. Unless the Buyer has (within 15 Business Days of receipt of such notice) either:
- 2.8.1. paid in full a pro-forma invoice in respect of all Unfulfilled Contracts; or
- 2.8.2. put in place either:
- 2.8.2.1. an irrevocable bank guarantee with a reputable bank within the United Kingdom for the value of the aggregate unfulfilled Contracts; or
- 2.8.2.2. a confirmed, irrevocable letter of credit or adequate standby letter of credit with a reputable bank within the United Kingdom in respect of all unfulfilled Contracts,
- in terms which are satisfactory to the Company and has provided the Company with the original documents relating to such financial arrangements,
- the Company shall be entitled to cancel by notice with immediate effect any unfulfilled Contracts (or part thereof) at any time without liability to the Buyer.

**3. PRICE AND SPECIFICATION**

- 3.1. The price of the Goods shall (unless otherwise stated by the Company in writing) be the list price of the Company current at the date on which the order is accepted by the Company (“the Price”). The Price shall be:
- 3.1.1. inclusive of the costs of packaging;
- 3.1.2. (subject to Condition 9.5.2) inclusive of the costs of delivery; and
- 3.1.3. exclusive of any sales taxes.
- 3.2. If any sales taxes are chargeable in respect of the supply of the Goods, the Buyer shall pay such taxes to the Company in addition to the Price.
- 3.3. The Company reserves the right by notice given at any time before delivery to vary the Price if, after the date of acceptance of the order, there is an increase in the cost of the Goods to the Company by reason of any circumstance outside the control of the Company including (without limitation) increases in the cost of materials, labour or transport, exchange rate fluctuations, increases in import levies or other taxes, war, hostilities or warlike operations. If the Price is increased pursuant to this Condition 3.3, the Buyer may cancel any undelivered instalments of the Goods relating to such Contract by notice to the Company, such notice to be given within 3 Business Days of receipt of the Company’s notice of an increase of the Price.

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- 3.4. The quantity and description of the Goods shall be as set out in the Order Confirmation.
- 3.5. Subject to Condition 3.4, all descriptions, representations, specifications, samples, colours, illustrations and other particulars furnished or made orally by the Company or in catalogues, trade literature or other documents issued by the Company are given for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and no Contract shall be a sale by sample. The Buyer acknowledges that it does not and shall not enter into any Contract in reliance upon any such description, representation, specification, sample, colour, illustration or other particular and that the Company shall be entitled to amend the look, design and specification of the Goods at any time without liability to the Buyer.
- 3.6. The Buyer shall not resell the Goods in packaging which has been altered or changed in any way from the packaging in which the Goods were delivered without the prior written consent of the Company.

**4. DELIVERY**

- 4.1. Any time or date for delivery given by the Company (“the Due Date”) shall be an estimate only and time for delivery shall not be made of the essence by notice. **Subject to the other provisions of these Conditions, 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 or incurred directly or indirectly as a result of any delay in the delivery of the Goods (even if caused by the Company’s negligence) nor shall any delay in delivery entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 3 calendar months after the Due Date.**
- 4.2. The Company shall be deemed to have delivered the Goods when the Goods are delivered to the place or carrier (as the case may be) in the United Kingdom specified by Buyer and sections 32(1) and 32(2) of the Sale of Goods Act 1979 shall not apply to any Contract.
- 4.3. All risk in the Goods shall pass to the Buyer upon delivery.
- 4.4. The Company may effect delivery of the Goods in instalments and may invoice Buyer for each such instalment.
- 4.5. If for any reason the Buyer fails to accept delivery of the Goods or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, then:
- 4.5.1. risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company’s negligence);
- 4.5.2. the Goods shall be deemed to have been delivered on the date for delivery notified by the Company to the Buyer; and
- 4.5.3. the Company may (without prejudice to any other right or remedy available to it) do any or all of the following:
- 4.5.3.1. arrange for storage of the Goods on behalf of the Buyer and charge, in addition to the Price, any and all costs incurred by the Company in respect of such delay, including (without limitation) the cost of storage, insurance and redelivery of the Goods;
- 4.5.3.2. sell the Goods for the Company’s account; and
- 4.5.3.3. cancel the Contract as regards any Goods that remain to be delivered thereunder.

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- 4.6. The Buyer shall ensure (at its own cost) that there is adequate and appropriate equipment and manual labour available at the point and time of delivery for unloading and loading of the Goods.
- 4.7. Each delivery instalment shall be considered as a separate contract and the Company's failure to deliver any one instalment shall not entitle the Buyer to repudiate or cancel any other Contract or delivery instalment.
- 4.8. The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence to the contrary.
- 4.9. If the Company delivers to the Buyer a quantity of Goods of up to 5 per cent. more or less than the quantity stated on the Order Confirmation, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall (as the case may be). In the event of a shortfall in delivered quantity, the Buyer shall notify the Company of the quantity missing from the delivery within 3 Business Days of delivery and (subject to such shortfall being verified to the satisfaction of the Company) the Company shall either replace such missing Goods as soon as is reasonably practicable or issue a credit note at the pro rate Contract rate against any invoice raised for such Goods. In the event of a surplus in delivered quantity, the Buyer shall promptly notify the Company in writing of the surplus quantity and whether or not it is prepared to accept and pay for such surplus quantity. If the Buyer notifies the Company that it is not prepared to accept and pay for such surplus quantity, the Buyer shall make the surplus Goods available for collection by the Company and the Company shall collect such surplus quantity within a reasonable period of time of receipt of such notice. This Condition 4.9 contains the Buyer's sole remedy in respect of any surplus or shortfall deliveries.

**5. PAYMENT**

- 5.1. Time for payment shall be of the essence. Unless otherwise agreed in writing by the Company and subject to Condition 5.2, payment of any sum due under these Conditions or any Contract shall be made in full in pounds sterling by direct bank transfer (free of all bank charges) or a cheque made out in pounds sterling:
- 5.1.1. within 22 Business Days from the date of the invoice where the final destination of the Goods is within the United Kingdom; and
- 5.1.2. within 66 Business Days from the date of the invoice where the final destination of the Goods is outside of the United Kingdom.
- 5.2. Payment for the Goods delivered shall become due immediately if:
- 5.2.1. the Buyer convenes a meeting of creditors (whether formal or informal), or enters into a company voluntary arrangement or any other arrangement or compromise for the benefit of any creditors, or the Buyer enters into liquidation, whether voluntary or compulsory, 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 Buyer, or notice of intention to appoint an administrator is given by the Buyer 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 Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced in relation to the insolvency or possible insolvency of the Buyer; or
- 5.2.2. the Buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade;
- 5.2.3. the Buyer is deemed unable to pay or has no reasonable prospect of being able to pay his debts within the meaning of Section 268 of the Insolvency Act 1986, or a

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petition for a bankruptcy order is made against him or a bankruptcy order is made against him; or

- 5.2.4. the Buyer is affected by any event analogous to those listed in Conditions 5.2.1 to 5.2.3 (inclusive) in any other jurisdiction,
- (together, “Events of Insolvency”).
- 5.3. If the Buyer fails to pay any sum due on or before the due date, the Company may (without prejudice to any other right or remedy available to it) carry out any or all of the following actions:
- 5.3.1. suspend all further deliveries until payment in full thereof has been made;
- 5.3.2. cancel any Contracts made with the Buyer in respect of which any Goods remain to be delivered; and
- 5.3.3. charge the Buyer interest on such sum from the due date for payment at the annual rate of 4 per cent. above the base lending rate from time to time of National Westminster Bank PLC, accruing on a daily basis until payment is made, whether before or after any judgment.
- 5.4. The Buyer shall not be entitled to withhold payment in whole or in part on the ground that it has any claim, counterclaim or set-off against the Company unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
6. **TITLE**
- 6.1. Notwithstanding delivery, both the (a) legal and (b) equitable title to the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.1.1. those particular Goods; and
- 6.1.2. all other sums which are or which become due to the Company from the Buyer on any account.
- 6.2. Until both the legal and equitable title to the Goods have passed to the Buyer, the Buyer shall:
- 6.2.1. hold the Goods on a fiduciary basis as the Company’s bailee;
- 6.2.2. store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company’s property;
- 6.2.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 6.2.4. maintain the Goods in a 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 Buyer shall produce the relevant policy of insurance to the Company.
- 6.3. The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 6.3.1. any sale shall be effected in the ordinary course of the Buyer’s business at full market value;

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- 6.3.2. the Buyer shall forthwith pay the proceeds of such sale into a separate bank account clearly denoted as an account for monies deposited by the Buyer in a fiduciary capacity for the Company’s benefit; and
- 6.3.3. any such sale shall be a sale of the Company’s property on the Buyer’s own behalf and the Buyer shall deal as principal when making such a sale.
- 6.4. The Buyer’s right to possession of the Goods shall terminate immediately if the Buyer:
- 6.4.1. is affected by any Event of Insolvency (as defined in Condition 5.2); or
- 6.4.2. suffers or allows any execution, whether legal or equitable, to be levied on its property or to be obtained against it; or
- 6.4.3. encumbers or in any way charges any of the Goods; or
- 6.4.4. fails to observe or perform any of its obligations under any Contract or any other contract between the Company and the Buyer.
- 6.5. The Buyer hereby grants the Company, its agents and employees an irrevocable licence to enter any premises where the Goods are or may be stored in order to inspect them or, where the Buyer’s right to possession of the Goods has terminated, to recover any Goods which are the Company’s property or to which the Company has either or both of the legal and equitable title.
- 6.6. The Company shall be entitled to maintain an action for the Price (and any other sums payable in accordance with these conditions), notwithstanding that either or both of the legal and equitable title in such Goods has not passed to Buyer.
- 6.7. Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer’s right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 6.8. Upon termination of a Contract, the Company’s (but not the Buyer’s) rights contained in this Condition 6 shall remain in effect.
7. **QUALITY**
- 7.1. The Company warrants that the Goods supplied by the Company shall be of satisfactory quality and, in particular, will comply with the terms of the Toys (Safety) Regulations 1995, the General Product Safety Regulations 1999 and the Pencils & Graphic Instruments (Safety) Regulations 1998.
- 7.2. The Buyer shall be responsible for arranging for the testing and inspection of the Goods, if required, upon delivery.
- 7.3. **The Company shall not be liable for loss of or damage to the Goods during transit to the delivery location unless, within 3 Business Days of delivery, the Buyer gives notice to the Company that it has not received the Goods or that the Goods are damaged and specifying in reasonable detail the nature and extent of such damage.**
- 7.4. **The Company shall only be liable to the Buyer for Goods which do not comply with Condition 7.1 if:**
- 7.4.1. **the Buyer gives notice to the Company as soon as possible after discovery of the defect (and in any case within 5 Business Days of the date of delivery in the case of defects which are or should have been visible upon inspection of the Goods) specifying in reasonable detail (including, where appropriate, by photographic image) the description of the Goods which are alleged to be**

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defective and the number of the Goods alleged to be affected by such defect (“the Defective Goods”);

- 7.4.2. the Buyer has not made use of any of the Defective Goods after giving such notice to the Company;
  - 7.4.3. the whole consignment of Goods of which the Defective Goods form a part remains available for inspection by the Company for as long as the Company reasonably requires;
  - 7.4.4. if so required by the Company, the Defective Goods are returned to the Company at the Buyer’s expense and risk (and section 36 of the Sale of Goods Act 1979 shall not apply);
  - 7.4.5. the defect is found (to the Company’s satisfaction) to be due solely to the Company’s faulty design, or due to defective materials or workmanship;
  - 7.4.6. the Goods have not been subjected to neglect, carelessness or abnormal conditions, misused, or involved in any accident or attempt at repair, replacement or modification, or dealt with contrary to directions issued by the Company; and
  - 7.4.7. payment for the Goods has been received in full by the Company in accordance with these Conditions.
- 7.5. The Company’s liability under Conditions 7.3 and 7.4 (whether based on negligence or any other cause of action) shall be limited to either (at the Company’s option):
- 7.5.1. replacing (or, at the Company’s option, repairing) the lost, damaged or defective Goods; or
  - 7.5.2. repaying a corresponding proportion of the Price paid by the Buyer in respect of such Goods.
- 7.6. The warranty contained in Condition 7.1 is specifically limited to those Goods actually manufactured by or on behalf of the Company and is given in respect of the Buyer only. No warranty is made to any other person, whether a subsequent purchaser or user or to any bailee, licensee, assignee, employee, agent or otherwise.
8. **LIMITATION OF LIABILITY**
- 8.1. Subject to Conditions 4 and 7, the following provisions of this Condition 8 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 Buyer in respect of:
- 8.1.1. any breach of these Conditions or any Contract;
  - 8.1.2. any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
  - 8.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with any Contract.
- 8.2. All conditions, warranties or obligations (whether express or implied by statute, common law or otherwise) including, without limitation, any warranties in respect of third party intellectual property rights are excluded to the fullest extent permitted by law and the provisions of these Conditions shall apply in lieu thereof.
- 8.3. Nothing in these Conditions excludes or limits the liability of the Company:

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- 8.3.1. (if and to the extent that the Unfair Contract Terms Act 1977 applies to any Contract), in respect of death or personal injury resulting from the Company’s negligence, as that expression is defined in section 1 of that Act;
  - 8.3.2. arising under section 2(3) of the Consumer Protection Act 1987; or
  - 8.3.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - 8.3.4. for fraud or fraudulent misrepresentation.
- 8.4. **Subject to Conditions 8.2 and 8.3:**
- 8.4.1. the Company’s total liability in contract, tort (including, without limitation, negligent or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of any Contract shall be limited to 125 per cent. of the Price in respect of such Contract; and
  - 8.4.2. the Company shall not be liable to the Buyer for any loss of profit, loss of business, depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential losses whatsoever (howsoever caused) which arise out of or in connection with the Contract or its performance.
9. **EXPORT TERMS**
- 9.1. In this Condition 9, “Incoterms” means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2000. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of the relevant Incoterm shall have the same meaning in these Conditions, but if there is any conflict between the provisions of the Incoterms and these Conditions, these Conditions shall prevail.
- 9.2. Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 9 shall (subject to any special terms agreed in writing between the Company and Buyer) apply notwithstanding any other provision contained in these Conditions.
- 9.3. Unless otherwise agreed in writing between the Company and Buyer, the Goods shall be delivered in accordance with the Incoterm FCA (“Free Carrier”) (as such Incoterm is varied by the terms of these Conditions) to a carrier nominated by the Buyer.
- 9.4. The Buyer shall be responsible (at its own cost) for:
- 9.4.1. payment of any duties or levies in respect of the exportation of the Goods from the place of delivery and their importation into the country of destination;
  - 9.4.2. obtaining any export licences or other official authorisation and carrying out all customs formalities necessary for the export of the Goods; and
  - 9.4.3. complying with any legislation, regulation or customs formalities relevant to the importation of the Goods into the country of destination.
- 9.5. If the Company agrees to supply the Goods on an ‘ex works’ basis then:
- 9.5.1. notwithstanding the definition of delivery in Condition 1.1, the Goods shall be deemed to have been delivered when they are placed at the disposal of the Buyer in accordance with the Incoterm EXW (Ex Works), the location of the works to be determined by the Company from time to time;

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- 9.5.2. the Price shall not include any costs of delivery or shipment; and
- 9.5.3. the Company may agree to arrange shipment on behalf of the Buyer, in which case:
  - 9.5.3.1. the Company shall act as the agent of the Buyer in arranging shipment;
  - 9.5.3.2. such agreement shall not affect the point at which risk passes to the Company or the time at which delivery is effected; and
  - 9.5.3.3. the cost of such shipment shall be payable by the Buyer to the Company in addition to the Price; and
  - 9.5.3.4. the Company shall be under no obligation to give notice to the Buyer under section 32(3) of the Sale of Goods Act 1979.

**10. ASSIGNMENT**

- 10.1. The Buyer shall not be entitled to assign or transfer or purport to assign or transfer part or all of either or both of the benefit or burden of any Contract to any person or business without the prior written consent of the Company.
- 10.2. The Company may assign or transfer the Contract or any part of it to any person or business.

**11. NOTICES**

- 11.1. Any notice to be given under these Conditions or any Contract shall be in writing and may be:
  - 11.1.1. delivered, or be sent by pre-paid ‘signed for’ post or by courier addressed to the party to be served at the address for such party last known to the party giving the notice; or
  - 11.1.2. transmitted by facsimile to the facsimile number of the party to be served last known to the party giving notice; or
  - 11.1.3. sent by email to the email address of the party to be served last known to the party giving notice.
- 11.2. A notice shall be deemed served by:
  - 11.2.1. ‘signed for’ post or by courier upon the obtaining of a signature from an individual at the address stated on the envelope;
  - 11.2.2. facsimile upon receipt of a acknowledgement of delivery provided that the facsimile is sent during normal working hours on any Business Day, failing which the facsimile shall be deemed served on the next Business Day;
  - 11.2.3. email upon receipt of a ‘read receipt’ provided that the email is sent during normal working hours on any Business Day, failing which the email shall be deemed served on the next Business Day.

**12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1. Except as expressly provided in these Conditions, the Buyer shall have no rights in respect of any of trade marks, copyright, designs, databases, patents and inventions (whether or not any of those is registered and including applications for registrations of these) and all rights of the same or similar effect or nature in any jurisdiction (“Intellectual Property Rights”) owned or licensed to the Company relating to the Goods and the Buyer acknowledges that, except as expressly provided in these Conditions, the Buyer shall not acquire any rights in respect thereof and that all such Intellectual Property Rights are and shall remain vested in or controlled by the Company.

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- 12.2. Subject to Condition 12.3, where any aspect of the design or content of any of the Goods is generated by or on behalf of the Buyer, the Buyer:
- 12.2.1. hereby assigns to the Company any and all Intellectual Property Rights in the Goods vested in the Buyer to the Company (including, without limitation, in respect of such design or content); and
  - 12.2.2. shall (at its own cost) procure a waiver of any moral rights (including, without limitation, the right to object to derogatory treatment or the right to be identified as an author or illustrator) from any natural person involved in the generation of such design or content (other than that created solely by the Company) in favour of the Company and its successors in title;
  - 12.2.3. shall (at its own cost) provide to the Company with all such further assistance as is necessary to ensure that any and all Intellectual Property Rights in such design or content are fully vested in the Company; and
  - 12.2.4. hereby warrants that such design or content (other than that created solely by the Company):
    - 12.2.4.1. does not and will not violate any Intellectual Property Rights of any third party; and
    - 12.2.4.2. does not and will not contain anything which is or might be regarded as being libellous, defamatory or obscene anywhere in the world.
- 12.3. Where it is agreed that any or all of the Goods shall incorporate the Buyer’s logo or branding, all Intellectual Property Rights in such logo or branding shall remain vested in the Buyer save that the Buyer hereby grants to the Company an exclusive, irrevocable, royalty-free licence to use the Buyer’s logo and branding on such Goods as are manufactured in consequence of an order for such Goods being placed by the Buyer. When using such logo or branding, the Company shall comply with any reasonable branding guidelines issued by the Buyer from time to time (if any). The Company shall seek the written approval of the Buyer as to the location, size and appearance of any such logo or branding. If such approval is not given to the Company by the Buyer within 10 Business Days of the date of the Company submitting a written request for such approval to the Buyer, the requested approval shall be deemed to have been given by the Buyer.
- 12.4. No warranty is given to the Buyer in respect of any claims of infringement of the Intellectual Property Rights of a third party arising from the use, promotion or sale of the Goods supplied by the Company.
- 12.5. The Buyer shall immediately inform the Company of any infringement of the Company’s Intellectual Property Rights relating to the Goods or of any claim that the Goods or the Company’s Intellectual Property Rights infringe the Intellectual Property Rights of a third party and shall:
- 12.5.1. provide the Company (at the Company’s cost) with all reasonable assistance in respect of taking or defending any action in respect of such infringement;
  - 12.5.2. not make any statement to any third party which may prejudice the position of the Company, its bringing or defence of any claim and the conduct of any associated settlement negotiations; and
  - 12.5.3. not take any action in the Buyer’s own name in respect of such infringement or claim without the prior written consent of the Company.
13. **FORCE MAJEURE**
- 13.1. The Company reserves the right to defer the date of deliver or to cancel any Contract or reduce the volume of Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or

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delayed in the carrying on of its business due to any or all of acts of God, insurrection, riot, war, hostilities, warlike operations, piracy, arrests, restraints or detentions of any competent authority, strikes or combinations or lock-out of workmen, fire, floods, droughts, earthquakes, mechanical breakdown, shortage of or inability to obtain materials, equipment or transportation or any other circumstances (whether of a nature similar to those specified, or not) beyond the control of the Company regardless of whether or not the circumstances in question could have been foreseen at any time.

- 13.2. If the event in question continues for a continuous period in excess of 6 calendar months, the Buyer shall be entitled to give notice to the Company to terminate the Contract with immediate effect.
- 13.3. If any deliveries under any Contract should be suspended under Condition 13.1, the Buyer shall nevertheless accept delivery and pay for such of the Goods as the Company shall be able to deliver.
- 13.4. If the Company has contracted to provide identical or similar goods to more than one Buyer and is prevented from fully meeting its obligations by reason of any of the events referred to in Condition 13.1, the Company may determine which contracts it will honour and to what extent at its own discretion without liability to the Buyer.

**14. GENERAL**

- 14.1. Each right or remedy of the Company under any Contract is without prejudice to any other right or remedy of the Company, whether under Contract or not.
- 14.2. If any Condition or part of any Condition shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other Condition or part of any Condition, all of which shall remain in full force and effect and shall not be affected thereby.
- 14.3. The Buyer shall keep confidential and shall not without the prior written consent of the Company disclose to any third-party any technical, know-how, data or other commercial information which it has acquired from the Company as a result of discussions, negotiations and other communications between them relating to the Goods and any Contract.
- 14.4. Failure or delay by the Company in enforcing or partially enforcing any provision of any Contract shall not be construed as a waiver of any of its rights under that or any other Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of that Contract.
- 14.5. No term of any Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 14.6. These Conditions and any Contract and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties irrevocably submit to the exclusive jurisdiction of the English courts. Nothing within these Conditions or in any Contract shall affect the right of either the Buyer or the Seller to enforce a judgment of the English courts in the courts of any other jurisdiction.

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