

General Terms and Conditions of Purchase of Floplast Limited April 2023

1. **Definitions**

“**Applicable Law**” any statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal), rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body, and/or industry code of conduct or guideline which relates to the Contract and/or the Goods and/or their manufacture, packaging, packing and/or delivery and/or the Services and/or the activities which are comprised in all or some of the Services or the use or application of the output from the Services.

“**Confidential Information**” means the terms of the Contract, the terms of the Order, any enquiry made by Customer, and any information that relates to a party (or any of its Group Companies) and which is disclosed to the other party in connection with the Contract, including Contract Personal Data, but excluding information that (a) is at the relevant time in the public domain (other than by virtue of a breach of **Condition 15**, (b) was received by the other party from a third party who did not acquire it in confidence, or (c) is developed by the other party without any breach of the Contract.

“**Contract Personal Data**” means any personal data relating to Customer’s employees, customers or contractors, that the Supplier processes, including Personal Data collected by the Supplier, solely for the purposes of the supply of the Services, other than for the purposes of the management of any warranties offered by the Supplier.

“**Control**” in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting paper, exercising contractual powers or otherwise and “**Controlled**” will be construed accordingly.

“**Customer**” Floplast Limited and any of its Group Companies.

“**Data Protection Laws**” means all Applicable Laws relating to data protection, the processing of personal data and privacy, including:
 - (i) the General Data Protection Regulation (EU) 2016/679;
 - (ii) the Data Protection Act 2018; and
 - (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications);and references to “**Data Controller**”, “**Controller**”, “**Data Processor**”, “**Processor**”, “**Data Subjects**”, “**Personal Data**”, “**Process**”, “**Processed**”, “**Processing**”, “and “**Supervisory Authority**” have the meanings set out in, and will be interpreted in accordance with, such Applicable Laws

“**Delivery**” the time at which delivery of the Goods occurs in accordance with **Condition 6.2**.

“**Goods**” the goods set out in the Order.

“**Group Companies**” in respect of a person, any persons that Control, are Controlled by or are under common Control with that person from time to time.

“**Intellectual Property Rights**” all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know-how, registered trade marks, registered designs, models, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions.

“**International Transfer**” means any transfer of Contract Personal Data outside the EEA.

“**Order**” Customer’s written acceptance of the Supplier’s quotation for the supply of goods and/or services to Customer or other written offer by Customer to purchase goods and/or services from the Supplier.

“**Order Acknowledgement**” the Supplier’s acceptance of the Order.

“**Prices**” the prices for the Goods and/or Services set out in the Order.

“**Services**” the services set out in the Order.

“**Supplier**” the person named as the supplier in the Order.
 2. **Contract Formation**
 - 2.1 The Supplier’s quotation will correspond with the requirements, descriptions and/or specifications provided by Customer and will expressly identify in writing any non-conformity (if any) with such requirements, descriptions and/or specifications. The Supplier’s quotation will be made free of charge and Customer will be under no obligation to accept the quotation.
 - 2.2 The Order constitutes an offer by Customer to purchase Goods and/or Services from the Supplier on these Conditions and will be acknowledged by the Supplier in writing within 7 days from and including its date.
 - 2.3 A contract for the supply of Goods and/or Services by the Supplier to Customer on these Conditions (the “**Contract**”) will be formed on the earlier of:
 - 2.3.1 Customer receiving the Order Acknowledgement;
 - 2.3.2 the expiration of the period referred to in **Condition 2.2**, at which point the Order shall be deemed accepted on Customer’s terms unless the Supplier has rejected the Order by written notification; and
 - 2.3.3 Delivery or commencement of performance of the Services.
 - 2.4 Unless explicitly agreed otherwise in the Order, these Conditions are the only terms and conditions on which Customer will purchase goods and/or services from the Supplier and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Supplier purports to apply under any quotation, acknowledgement, acceptance or confirmation of order, delivery note, invoice or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.
 3. **Orders**
 - 3.1 Customer may vary the Order by giving written notice to that effect to the Supplier at any time before Delivery of the Goods and/or performance of the Services.
 - 3.2 Without limiting **Condition 3.1**, any variation of an Order will be acknowledged by the Supplier in writing within 7 days from the date of the notice given under **Condition 3.1**.
 4. **The Goods**
 - 4.1 The quantity and description of the Goods will be as set out in the Order.
 - 4.2 The Supplier will provide all components and ancillary services in accordance with Customer’s requirements which are already included in the Price, even if they are not explicitly stated in the Order.
 - 4.3 The Goods will be in compliance with statements of the Supplier and of the manufacturer made in public, in particular in brochures and product descriptions, including statements of all members of the manufacturing or distribution chain and the public statements of a person who describes himself as a manufacturer by affixing his name, his trademark or any other identification mark on the Goods. The Supplier will ensure that the Goods will:
 - 4.3.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - 4.3.2 be fit for any purpose held out by the Supplier or made known to the Supplier expressly or by implication and in this respect Customer relies on the Supplier’s skill and judgement;
 - 4.3.3 correspond with their description;
 - 4.3.4 correspond with any specimen or sample given (if any);
 - 4.3.5 conform to any written technical specification for the Goods set out or referred to in the Order;
 - 4.3.6 be free from defects in design, materials and workmanship;
 - 4.3.7 comply with all relevant Applicable Laws; and
 - 4.3.8 be so formulated, designed, constructed, finished, labelled and packaged as to be safe and without risk to health.
 - 4.4 If and to the extent that an Order contains no particular quality requirements, the Goods will at least be of a quality customary in trade and have the properties normally assumed and comply with all Applicable Laws.
 - 4.5 The standards and drawings stated and/or referred to in the Order refer to the issue last published and valid at the date of the Order unless expressly stated otherwise in the Order.
 - 4.6 All requirements of Customer shall be requested by the Supplier unless they have not been made available already.
 - 4.7 All relevant EU directives regarding CE labelling that are applicable to the Goods (and in cases where EU-law is not applicable also all other national and international legal norms to that end which are applicable) shall be observed by the Supplier. The respective declaration of conformity including the relevant documentation (in case of non-EU suppliers) will be enclosed with the delivery.
 - 4.8 Without prejudice to any other rights or remedies of Customer (whether express or implied), if any Goods do not conform with any of the terms of **Condition 4.3** Customer may (whether or not the Goods have been accepted):
 - 4.8.1 terminate the Contract immediately by giving written notice to that effect to the Supplier; or
 - 4.8.2 require the Supplier, at Customer’s option, to promptly repair or replace the relevant Goods free of charge or to refund the Price for the relevant Goods, and, in either case, Customer will be entitled to recover from the Supplier any and all liabilities, losses, damages, costs and expenses incurred by Customer as a result of the non-conformity of the Goods, including in obtaining substitute goods from another supplier.
 - 4.9 **Condition 4.3** will apply to any repaired or replacement Goods supplied under **Condition 4.8.2**.
 - 4.10 Customer will have the right to inspect and test the Goods at any time prior to Delivery. The Supplier will permit Customer, its officers, employees, agents and sub-contractors to enter upon the Supplier’s premises, and will procure permission for such persons to enter upon any relevant third party premises, to carry out such inspection and testing and will provide Customer with all facilities reasonably required.
 - 4.11 If, following inspection or testing under **Condition 4.10** Customer gives written notice to the Supplier that it is not satisfied that the Goods will comply with **Condition 4.3** the Supplier will at its own cost take all steps necessary to ensure compliance. Any breach of this obligation by the Supplier will be deemed to be a material breach entitling Customer to terminate the Contract under **Condition 19.1**
 - 4.12 No inspection or testing under **Condition 4.10** will reduce or otherwise affect the Supplier’s obligations under the Contract.
 - 4.13 If tests are planned for the Goods, the Supplier shall bear all related costs of material and of his staff. The Supplier shall notify Customer of readiness for testing in writing at least one week in advance and the parties will agree a test date. If the Goods are not presented at that test date, Customer’s staff costs related to the test will be borne by the Supplier.
 - 4.14 If repeated or additional tests are necessary because of identified defects, the Supplier bear all related costs of material and staff.
 - 4.15 For materials verification of feedstock the Supplier shall bear the costs of material and staff.
 - 4.16 If assembly or installation of the Goods, maintenance work, inspections, repairs, and/or other works are carried out in respect of the Goods on Customer’s premises, the Supplier will comply and will procure that its officers, employees, agents and sub-contractors will comply with all health and safety policies, site rules, and the reasonable instructions of Customer.
 - 4.17 The Supplier will maintain and observe quality control and supplier quality assurance standards in respect of the Goods and Services in accordance with the requirements of Customer, relevant British Standards and the requirements of any relevant statutory and regulatory bodies.
 - 4.18 Notwithstanding any act of receipt of delivery, Customer will not be deemed to have accepted any Goods until it has had a reasonable time to inspect the Goods following Delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.
5. **Special Provisions for Deliveries of Hardware and Software**
 - 5.1 The Supplier guarantees that delivered hardware and software contains no copy protections, expiration dates or similar restrictions of use and is free from rights of third parties. The delivery shall in any case contain comprehensible and complete documentation in the local language of the place of performance and/or at Customer’s request in German or English.
- 5.2 The Supplier grants Customer a transferable right to use and exploit the delivered software which shall be unlimited geographically and in time. The Supplier will provide maintenance services for any hardware and/or software supplied under the Contract and for spare parts for a period of 7 years

as of performance in conformity with the contract and will inform Customer of the most recent hardware and software released from time to time.

6. Delivery

- 6.1 The Supplier may not deliver the Goods by separate instalments without Customer's prior written consent. If Customer gives such consent, the Supplier will invoice the Price for each instalment separately in accordance with **Condition 10.3** and Customer will be entitled, at its sole discretion, to exercise its rights and remedies (whether under these Conditions or otherwise) in respect of the relevant instalment or the whole Contract. Unless otherwise stated in the Order, Prices for the Goods shall include all costs and expenses incurred by the Supplier including all packaging, transport, insurance, delivery and unloading costs and shall be free place of performance (DDP).
- 6.2 The Goods will be delivered DDP (as such term is defined in Incoterms 2010) on the date and at the address specified in the Order or, if no address is specified in the Order, the place of delivery will be the registered office of the relevant Customer entity that placed the Order. Delivery of the Goods will occur on the later of (a) when the Supplier completes its delivery obligations under that Incoterm and (b) when the Goods are unloaded at the delivery address by the Supplier.
- 6.3 Customer will be entitled, as an option, to take delivery EXW (as such term is defined in Incoterms 2010), in which case the charges, costs and expenses of export, import, customs permits and carriage of the Goods to the delivery address will be deducted from the Price. If Customer exercises such option, Customer will as soon as reasonably practicable notify the Supplier thereof.
- 6.4 If import or export permits or other official permits or approvals or consents of third parties are required for execution of the Order, the Supplier shall obtain the same on time.
- 6.5 Risk in and ownership of the Goods shall pass to Customer on Delivery and free from any security rights of third parties.
- 6.6 The Supplier will ensure that:
- 6.6.1 a dispatch advice is sent to the relevant receiving Customer entity and department before Delivery;
- 6.6.2 the Goods are packed, marked and dispatched in accordance with Customer's instructions and any Applicable Laws and so as to reach their destination in an undamaged condition;
- 6.6.3 on or before Delivery, Customer is provided with a written list by name and description of any harmful or potentially harmful properties or ingredients in the Goods supplied and information concerning any changes in such properties or ingredients. Customer will rely on the supply of such information from the Supplier in order to satisfy its own obligations under the Health and Safety at Work Act 1974 and any relevant Applicable Laws;
- 6.6.4 on or before Delivery, Customer is supplied with all operating and safety instructions, clearly displayed warning notices and such other information as may be necessary for the proper use, maintenance and repair of the Goods; and
- 6.6.5 if the Supplier requires Customer to return any packaging material for the Goods, that fact is clearly stated on the delivery note and any such packaging material will only be returned at the Supplier's own cost.
- 6.7 The Supplier shall be responsible for compliance with the terms of delivery by his sub-contractors, including carriers commissioned by the Supplier and/or its sub-contractors. All shipments which cannot be accepted shall be stored at the cost and risk of the Supplier. Customer will be entitled to ascertain the contents and the condition of such shipments.
- 6.8 If, during the period between Order and Delivery, the Supplier reduces the Prices for the Goods and/or Services, the prices applicable on the date of Delivery will apply to the Order and the amount of the Supplier's invoice will be reduced accordingly.
- 6.9 Price increases will only be accepted if Customer has agreed to such price increase in writing before receipt of the Supplier's invoice.
- 6.10 If the Supplier delivers a quantity of Goods which is more than or less than the quantity set out in the Contract, Customer will be entitled to reject the Goods delivered or (where applicable) the excess Goods and the rejected Goods will be returnable at the Supplier's risk and expense. If Customer accepts delivery of a quantity of Goods which is more or less than the quantity set out in the Contract the sum invoiced by the Supplier under **Condition 10.3** will be adjusted on a pro rata basis to take account of the over or under delivery.

7. Documentation on Delivery

- 7.1 The Supplier will ensure that each delivery is accompanied by a delivery note which shows the Order number, date of Order, type and quantity of Goods, code numbers of Goods (if applicable), any special storage instructions and, where delivery by instalments is permitted, the outstanding balance of Goods remaining to be delivered. In case of carriage by sea the shipping documents and invoices shall state the name of the shipping company and of the vessel.
- 7.2 Upon Customer's request, the Supplier shall be obliged to send a certificate of preferential origin in relation to the Goods. Deliveries from non-EU countries shall be in compliance with preferential origin rules as provided in the relevant EU preference agreement.
- 7.3 The Supplier shall enclose with the Goods all documents, instructions, drawings and other documentation necessary for use, installation, application of the Goods in accordance with its purpose which Customer requires for use, setting-up, assembly, processing, storage, operation, maintenance, inspection and repair of the Goods, without request and completely. In addition, the Supplier shall immediately advise Customer of the name of the relevant manufacturer, importer or upstream supplier of the Goods upon request.
- 7.4 The Supplier shall at its own cost deliver lists of spare parts in the local language of the place of performance and at Customer's request provide additional lists of spare parts in the German and English language not later than the time of Delivery.

8. Delivery Period and Default in Delivery

- 8.1 If a delivery period has been agreed, such period shall commence on the date the Order is placed (mailing date). Delivery dates or completion dates required by Customer and/or agreed shall be fixed dates and mean that the Goods must be available to Customer at the delivery date stated and at the delivery address stated during normal local business hours.
- 8.2 As soon as the Supplier anticipates that he will not be able to effect Delivery on time, he shall give immediate written notice thereof to Customer together with a statement of the reasons and of the expected period of delay.
- 8.3 If Supplier fails to deliver the Goods on the date specified in **Condition 6.2**, without prejudice to any of Customer's other rights or remedies (whether express or implied), Customer may:
- 8.2.1 terminate the Contract immediately by giving written notice to that effect to the Supplier, in which case:

8.2.1.1 the Supplier will refund any monies already paid by Customer under the Contract in relation to the Goods that have not been delivered; and

8.2.1.2 Customer will be entitled to recover from the Supplier any and all liabilities, losses, damages, costs and expenses incurred by us as a result of the Supplier's failure to supply Goods and Services, including in obtaining substitute goods and/or services from another supplier; or

8.2.2 require the Supplier to pay to Customer on demand in cleared funds liquidated damages of a sum equal to 0.3% of the total Price of the Order for each week (pro rata for any part week) by which delivery of the Goods is delayed, up to a maximum sum equal to 10% of the total Price of the Order. In addition, Customer will be entitled to rescind the Contract in case of default in delivery, after having granted a grace period of 14 days and without prejudice to Customer's other rights and remedies (whether express or implied). The Parties agree that the liquidated damages are a genuine pre-estimate of the loss that Customer will suffer as a result of delay in delivery of the Goods and will not be regarded as penalty provisions. The Supplier waives any right to claim that the liquidated damages are penalty provisions.

8.3 In the event of early Delivery Customer reserves the right to charge to the Supplier resulting additional costs, charges and expenses incurred by Customer as a result of early Delivery (including without limitation costs of storage).

9. Services

9.1 The Supplier will, in performing the Services:

- 9.1.1 use the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management which would be adopted by a leading professional provider of the Services;
- 9.1.2 (without prejudice to **Condition 16.4.2**) use appropriately qualified, trained and experienced personnel;
- 9.1.3 fulfil all requirements set out in the Order and any written technical specifications for the Services set out or referred to in the Order;
- 9.1.4 perform the Services in accordance with any agreed service levels;
- 9.1.5 conduct itself in a safe manner which is free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner;
- 9.1.6 fully co-operate with Customer's agents, representatives and contractors;
- 9.1.7 ensure that it has and maintains all licences, permissions and consents required from time to time; and
- 9.1.8 comply with all relevant Applicable Laws, British Standards, requirements of any relevant statutory and regulatory bodies and health and safety and security policies that apply Customer's premises and all lawful and reasonable directions of Customer.

9.2 The Supplier will perform the Services on the performance date(s) set out in the Order. Time for provision of the Services will be of the essence of the Contract.

9.3 Without prejudice to Customer's other rights or remedies (whether express or implied), if the Supplier has failed to perform the whole or any part of the Services in accordance with the Contract, Customer may:

- 9.3.1 give the Supplier a notice specifying that its performance falls short of the requirements of the Contract or is otherwise unsatisfactory; and
- 9.3.2 suspend payments to the Supplier, in such amount as Customer deems appropriate, until the Supplier has rectified the defective performance of the Services to Customer's satisfaction.

9.4 Any notice served by Customer pursuant to **Condition 9.3** may require the Supplier to re-schedule and re-perform the Services to Customer's satisfaction and at the Supplier's own expense, including where necessary, the correction or re-execution of any Services already carried out within such period as may be specified in the notice (or where no such period is specified, as soon as reasonably practicable).

9.5 Any failure by the Supplier to comply with a notice given under **Condition 9.3** will be deemed to be a material breach entitling Customer to terminate the Contract under **Condition 19.1**.

10. Price and Payment

10.1 Subject to the Supplier performing its obligations in accordance with the terms of the Contract, Customer will pay the Prices in accordance with this **Condition 10**.

10.2 The only monies to be paid by Customer in connection with the supply of the Goods and the performance of the Services are the Prices which will be inclusive of all costs and expenses incurred by the Supplier including all packaging, insurance, carriage, delivery and unloading costs and all travel, accommodation and subsistence expenses.

10.3 The Supplier may invoice Customer for the Prices for the Goods following Delivery and provision of the documentation as set out in **Condition 7**.

10.4 The Supplier may invoice Customer for the Prices for the Services following completion of performance of the Services.

10.5 Invoices shall not be enclosed with the shipment. The Supplier will send invoices to the address specified in the Order. The Supplier's invoice will quote the Order number and correspond to the Order as regards language, order of the text, items and prices and extra goods and/or services or shortfalls in goods and/or services shall be stated separately in the invoice.

10.6 In case of shipments within the EU every invoice will contain the harmonised tariff schedule (HTS) number and the commodity's net weight as well as the VAT numbers of the contracting parties.

In the event that the Supplier's invoice does not comply with **Conditions 10.5** and **10.6**, Customer may demand that the invoice be re-issued in conformity with **Conditions 10.5** and **10.6**.

Payment periods shall commence at the date fixed, but not earlier than upon receipt of the Goods and/or completion of the performance of the Services and receipt of invoices in conformity with **Conditions 10.5** and **10.6**, and fulfilment of the conditions on CE labelling and declaration of conformity as per **Condition 4.7**. In case of complaints or if Customer disputes any part of an amount invoiced by the Supplier, the payment period shall commence only after complete settlement of the same. Unless otherwise agreed, the payment period must equal 60 days after the end of the month of the date of the invoice.

- 10.9 Assigning of invoice amounts shall only be possible upon Customer's prior written consent.
- 10.10 No payment made by Customer shall constitute acceptance or approval by Customer of the Goods or Services or any amount invoiced by the Supplier or otherwise prejudice any rights or remedies which Customer may have against the Supplier including the right to recover any amount overpaid or wrongfully paid to the Supplier.
- 10.11 If Customer is in default of payment, the parties agree on default interest in a maximum amount of 5% p.a. from the due date.
- 11. Warranty and Indemnity**
- 11.1 Without prejudice to Customer's other rights or remedies (whether express or implied), the warranty period for movable items shall be not less than 2 years or shall be such longer period as may be offered by the Supplier and/or as may be agreed between the parties in writing (the "**Warranty Period**") and shall commence on the day on which the Delivery Item is finally accepted by Customer. In any case, final acceptance shall only be effected if the conditions regarding CE labelling and/or otherwise labelling requirements and declaration of conformity as per **Condition 4.7** have been fulfilled. If Customer is held liable for warranty by its customer, Customer shall be entitled to assert warranty claims against the Supplier also after expiration of Warranty Period within 6 months of fulfilment of the warranty claims on its part.
- 11.2 For the duration of the Warranty Period Customer may retain 10% of the total Order value as liability cover amount, which shall not bear interest.
- 11.3 Without prejudice to Customer's other rights or remedies (whether express or implied), Customer may repair a defect itself or may have it repaired by third parties and claim reimbursement of the necessary expenses after fruitless expiration of a reasonable period for subsequent performance. Customer shall have this right also if subsequent performance failed or if the Supplier seriously and finally refuses repair of the defect; if repair of the defect is not effected or cannot be effected at a date agreed or within a certain period; or if special circumstances exist which, when weighing the mutual interests, justify immediate self-performance. Customer may request from the Supplier an advance payment for expenses necessarily to be incurred for the repair of the defect. The Supplier's warranty for deliveries where defects that have occurred are repaired by Customer or third parties shall continue to exist.
- 11.4 The Supplier will indemnify Customer against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that Customer does or will incur or suffer, all claims or proceedings made, brought or threatened against Customer by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses that Customer does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with:
- 11.4.1 any breach by the Supplier of any of its obligations under the Contract (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations); and
- 11.4.2 any claim made against Customer by a third party for death, personal injury or damage to and/or loss or destruction of property arising out of, or in connection with defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- This **Condition 11.4** will also not apply to any failure by the Supplier to deliver the Goods on the date specified in **Condition 6.2** if Customer has been paid liquidated damages by the Supplier under **Condition 8.2.2** in respect of that failure.
- 11.5 Without prejudice to **Condition 11.4**, if any person claims that the possession and/or use and/or sale of the Goods by Customer and/or its customers, officers, employees, agents or sub-contractors infringes the intellectual property rights of that or any other person ("**IPR Claim**"), the Supplier will indemnify Customer, its customers, officers, employees, agents and sub-contractors against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that Customer, its customers, officers, employees, agents or sub-contractors do or will incur or suffer, all claims or proceedings made, brought or threatened against us, our customers, officers, employees, agents or sub-contractors by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses Customer, its customers, officers, employees, agents or sub-contractors do or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with that IPR Claim.
- 12. Product liability and Insurance**
- 12.1 If the Supplier becomes aware of facts which might lead to product liability claims (including liability for death, personal injury, damage to and/or loss or destruction of property caused by the Goods or any part of the Goods), the Supplier shall be obliged to report the same to Customer immediately.
- 12.2 If any third party makes a claim, or notifies an intention to make a claim, against Customer which may be considered likely to give rise to liability under **Condition 11.4.2**, the Supplier will hand over all expedient means of evidence to Customer on time, provide such access to the Supplier's premises and its employees, agents and sub-contractors as may be necessary, and use best endeavours to support and cooperate with Customer in respect of such claim.
- 12.3 Customer shall not be liable to the Supplier in respect of any delayed, defective or non-provision however arising (including from Customer's negligence) of any service or resource required to be provided by it to enable the Supplier to perform the Supplier's obligations save that in the case of delayed, defective or non-provision of any such service or resource as Customer has agreed to provide, Customer shall if requested by the Supplier permit such extension of time to the Supplier as Customer shall (acting reasonably) consider to be necessary and appropriate in the circumstances.
- 12.4 The Supplier shall take out and maintain in force sufficient liability insurance at his cost for damage caused by himself, his staff or agents in connection with the Goods and Services. The Supplier will provide Customer with copies of the insurance policy and details of the amount of coverage per event of damage upon request by Customer. 15.3
- 12.5 Liability of Customer for loss of or damage to machines, equipment, tools, etc. provided by Customer to the Supplier shall be excluded except in cases of wilful intent or gross negligence.
- 13. Customer's Property** 15.4
- 13.1 Exclusive title to materials, equipment, tools, films, printing models, moulds and other facilities exclusively produced or obtained by the Supplier for execution of the Order shall pass to Customer not later than upon payment even if they remain in the possession of the Supplier. Such items shall be delivered to Customer upon request.
- 13.2 All documents and facilities which are made available to the Supplier by Customer for the purpose of manufacturing the Goods or providing the Services will at all times be and remain the exclusive property of Customer and shall not be used or reproduced by the Supplier otherwise than for the performance of its obligations under the Contract or made available to any third parties by the Supplier without the prior written consent of Customer. Such documents and facilities (together with all copies and reproductions of the same) will be returned to Customer upon request.
- 14. Anti-Corruption and Anti-Slavery**
- 14.1 The Supplier will, and will procure that its employees, agents and sub-contractors any other persons who perform Services for or on behalf of it or them in connection with the Contract will:
- 14.1.1 not commit any act or omission which causes or could cause Customer or the Supplier (or that person) to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;
- 14.1.2 keep accurate and up to date records showing all payments and all other advantages given and received in connection with the Contract and the steps taken to comply with this **Condition 14**, and permit Customer to inspect those records as required; and
- 14.1.3 promptly notify Customer of:
- 14.1.3.1 any request or demand for any financial or other advantage received by the Supplier (or that person); and
- 14.1.3.2 any financial or other advantage the Supplier (or that person) gives or intends to give; and
- 14.1.3.3 whether directly or indirectly in connection with the Contract.
- 14.2 The Supplier will, and will procure that its employees, agents and sub-contractors any other persons who perform Services for or on behalf of it or them in connection with the Contract will:
- 14.2.1 not engage in any practice that amounts to slavery or servitude, forced or compulsory labour, human trafficking or the arrangement or facilitation of the travel of another person with a view to that person being exploited ("**Modern Slavery Practice**");
- 14.2.2 comply with all Applicable Laws anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act 2015 ("**Anti-Slavery Laws**");
- 14.2.3 not do or omit to do any act or thing which constitutes or may constitute an offence under applicable Anti-Slavery Laws, or which causes or may cause Customer to breach and/or commit an offence under any Anti-Slavery Laws; and
- 14.2.4 comply with Customer's Supplier Code of Conduct, as amended from time to time.
- 14.3 The Supplier will:
- 14.3.1 conduct proper and adequate checks on any agency or person used by the Supplier or any authorised sub-contractor to provide labour, employees, contractors or other persons to undertake tasks for the Supplier or any authorised sub-contractors in connection with the Contract (in each case whether on a permanent or temporary basis) to ensure that any such agency or entity does not engage in any Modern Slavery Practice or abuse of human rights;
- 14.3.2 provide Customer with such reasonable assistance and information as Customer may require from time to time to enable Customer to:
- 14.3.2.1 perform any activity required by any government, regulatory entity or agency in any relevant jurisdiction for the purpose of compliance with any applicable Anti-Slavery Laws or as required by Customer;
- 14.3.2.2 prepare a slavery and human trafficking statement as required by section 54 Modern Slavery Act 2015 and to include the matters referred to in section 54(5) of that Act;
- 14.3.2.3 comply with any requirement to report on respect for human rights or to enable Customer to demonstrate compliance with any human rights code or policy to which it adheres, or which applies to it;
- 14.3.2.4 identify areas of risk for Customer and any non-compliance with Customer's Supplier Code of Conduct; and
- 14.3.2.5 conduct due diligence and to measure the effectiveness of the steps Customer is taking or wishes to take to ensure that Modern Slavery Practice or abuse of human rights is not taking place in its business or supply chains.
- 14.4 The Supplier will promptly notify Customer of any breach or suspected breach of this **Condition 14**.
- 14.5 Customer may terminate the Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of this **Condition 14**.
- 15. Confidentiality**
- 15.1 The Supplier undertakes to maintain the secrecy, safety and security of Customer's Confidential Information and the Supplier will only use Customer's Confidential Information for the purpose of performing its obligations under the Contract and will not disclose Customer's Confidential Information to any other person.
- The Supplier may disclose Customer's Confidential Information to those of its employees, agents and sub-contractors who need access to that Confidential Information so that it can perform its obligations under the Contract. The Supplier will procure that each person to whom it discloses that Confidential Information will not do or omit to do anything which if done or omitted to be done by that party would be a breach of this **Condition 15**.
- The Supplier shall also maintain the secrecy, safety and security of drawings, samples, models, moulds and other production documents and aids handed over to the Supplier by Customer, in which all rights, title, interest and Intellectual Property Rights will be owned by Customer. No licence or right to use any patent, copyright, registered design, trademark, trade name or similar right or any right to use any Confidential Information or trade secrets is granted by Customer.
- The Supplier's data (which for the avoidance of doubt and specifically in relation to this **Condition 15.4** is not Contract Personal Data) from the relevant Contract shall, in principle, only be processed automatically for purposes of completion of the Contract, in particular for administrative and

accounting purposes. However, the Supplier agrees that data relating to the Order may be processed by Customer and transmitted within Customer's Group Companies. This **Condition 15.5** is without prejudice to **Condition 16**.

- 15.5 The Supplier acknowledges and agrees that damages alone would not be an adequate remedy for breach of this **Condition 15**. Accordingly, Customer will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of this **Condition 15** by the Supplier.
- 15.6 This **Condition 15** shall survive complete performance of the Contract and termination of the Contract and termination of all contractual relationships between Customer and the Supplier.
- 15.7 This **Condition 15** is without prejudice to **Condition 16**.

16. Data Protection

16.1 The Supplier accepts that it is a Data Processor in relation to its processing of the Contract Personal Data (other than any processing of Contract Personal Data for the purposes of the provision of any warranty provided by the Supplier), and as such, it will not process the Contract Personal Data for any other purposes other than:

- 16.1.1 in compliance with the written instructions of Customer, including this Contract;
- 16.1.2 the prior written consent of Customer; or
- 16.1.3 where required by law. If the Supplier is legally required to Process Contract Personal Data, it shall notify Customer of such legal requirement prior to such Processing unless such Applicable Laws prohibit notifying Customer on public interest grounds; or
- 16.1.4 where necessary for the administration of any warranty, in the Supplier's capacity as a Data Controller;

16.2 The Supplier shall when Processing Contract Personal Data:

- 16.2.1 comply with the Data Protection Laws;
- 16.2.2 not cause Customer to breach any obligation under the Data Protection Laws;
- 16.2.3 notify Customer immediately if it identifies any areas of actual or potential non-compliance with the Data Protection Laws or this **Condition 16**, without prejudice to its obligations to comply with, or to any rights or remedies which Customer may have for breach of, the Data Protection Laws or this **Condition 16**;
- 16.2.4 have in place data security policies and procedures implementing the requirements set out in Customer's baseline data security standard, available at <https://Customer.co.uk/about-us/Customer-uk-baseline-data-security-standard>;
- 16.2.5 not engage or use any third party (a Sub-Processor) for the Processing of Contract Personal Data or permit any third party to Process Contract Personal Data without Customer's prior written consent.

16.3 If the Supplier appoints a Sub-Processor, the Supplier will ensure that, prior to the Processing taking place, there is a written contract in place between the Supplier and the Sub-Processor that specifies the Sub-Processor's Processing activities and imposes on the Sub-Processor the same terms as those imposed on the Supplier in this **Condition 16**. The Supplier will procure that Sub-Processors will perform all obligations set out in this **Condition 16** and the Supplier will remain responsible and liable to Customer for all acts and omissions of Sub-Processors as if they were its own.

16.4 The Supplier will:

- 16.4.1 without prejudice to **Condition 16.1**, not without the prior written consent of Customer:
16.4.1.1 convert any Contract Personal Data into anonymised, pseudonymised, depersonalised, aggregated or statistical data;
- 16.4.1.2 use any Contract Personal Data for "big data" analysis or purposes; or
- 16.4.1.3 match or compare any Contract Personal Data with or against any other Personal Data (whether the Supplier's or any third party's);
- 16.4.2 ensure that any individual authorised to Process Contract Personal Data accesses such Contract Personal Data strictly on a need to know basis as necessary to perform their role in the performance of this Agreement, and:
16.4.2.1 is subject to confidentiality obligations equivalent to those set out in **Condition 15** or is under an appropriate statutory obligation of confidentiality; and
16.4.2.2 complies with this **Condition 16**;
- 16.4.3 keep all Contract Personal Data confidential in accordance with the provisions of **Condition 15**, provided that in the event and to the extent only of any conflict between this **Condition 16** and **Condition 15**, this **Condition 16** will prevail; and
- 16.4.4 at the option of Customer, securely delete or return to Customer (in the format required by the Customer) all Contract Personal Data promptly after the end of the provision of Services or at any time upon request save for one copy of the Contract Personal Data which shall be retained by the Supplier for the purposes of administering any warranties or guarantees offered by the Supplier in respect of any of the Goods, and securely delete any remaining copies and promptly certify (via a director) when this exercise has been completed. The obligation to retain one copy of the Contract Personal Data shall apply after the termination or expiry of this agreement and until any warranty or guarantee period has expired in respect of the supplied goods, upon which point the Contract Personal Data shall, at the option of Customer, be securely deleted or returned to Customer.

16.5 The Supplier will not make an International Transfer without the Customer's prior written consent. If Customer gives its prior written consent to an International Transfer, before making that International Transfer the Supplier will demonstrate or implement, to the Customer's satisfaction, appropriate safeguards for that International Transfer in accordance with Data Protection Laws and will ensure that enforceable rights and effective legal remedies for Data Subjects are available.

16.6 If the appropriate safeguards demonstrated or implemented by the Supplier (or the relevant Sub-Processor) in accordance with **Condition 16.5** are deemed at any time not to provide an adequate level of protection in relation to Contract Personal Data, the Supplier will implement such alternative measures as may be required by Customer to ensure that the relevant International Transfer and all resulting Processing are compliant with Data Protection Laws. The Supplier or the relevant Sub-Processor will not need to comply with the conditions set out in this **Condition 16.6** if it is required to make an International Transfer to comply with United Kingdom, European Union or Member State Applicable Laws, in which case the Supplier will notify Customer of such legal requirement prior to such International Transfer unless such Applicable Laws prohibit notice to Customer on public interest grounds.

16.7 If the Supplier's registered office is situated outside the EU and Customer consider it necessary the Supplier shall provide Customer with details of its designated representative located in the European Union and for the avoidance of doubt **Condition 16.5** shall apply if

Supplier is to be Processing any Contract Personal Data outside the EEA and Supplier shall put in place and maintain appropriate safeguards for the International Transfer (to itself) in accordance with Data Protection Laws prior to any such Processing of Contract Personal Data by Supplier from outside the EEA.

- 16.8 The Supplier will:
- 16.8.1 implement, and assist Customer to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk presented by Processing the Contract Personal Data, in particular from a Data Security Incident;
- 16.8.2 notify Customer immediately if at any time the Supplier (or any Sub-Processor) is, or ought to be, aware of any reason why it is unable to comply with **Condition 16.8**, without prejudice to its obligation to comply with, or to any rights or remedies which Customer may have for breach of, **Condition 16.8**;
- 16.8.3 notify Customer immediately, and no later than 24 after becoming aware of a reasonably suspected, "near miss" or actual Data Security Incident, including the nature of the Data Security Incident, the categories and approximate number of Data Subjects and Contract Personal Data records concerned, the likely consequences of the Data Security Incident and any measure proposed to be taken to address the Data Security Incident and to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all the relevant information at the same time, the information may be provided in phases without undue delay, but the Supplier (and Sub-Processors) may not delay notification under this **Condition 16.8.3** on the basis that an investigation is incomplete or ongoing;
- 16.8.4 promptly (and in any event within 72 hours) notify Customer of any request or communication that it receives:
16.8.4.1 for exercise of a Data Subject's rights under the Data Protection Laws
16.8.4.2 from a Data Subject or Supervisory Authority in connection with Contract Personal Data (including complaints);
16.8.4.3 from any party, in connection with the Supplier's or Customer compliance with the Data Protection Laws. Where such correspondence contains sufficient information that indicates that a Data Security Incident has or has been likely to have occurred, **Condition 16.8.3** shall take precedence;
- 16.8.5 provide reasonable assistance to Customer in responding to requests or communications under **Condition 16.8.4**, including by appropriate technical and organisational measures, insofar as this is possible;
- 16.8.6 not, without Customer's prior written consent, make or permit any announcement in respect of a Data Security Incident or respond to any request for exercise of a Data Subject's rights under the Data Protection Laws or communication or complaint from a Data Subject or Supervisory Authority in connection with Contract Personal Data;
- 16.8.7 provide reasonable assistance to Customer in:
16.8.7.1 documenting any Data Security Incidents and reporting any Data Security Incidents to any Supervisory Authority and/or Data Subjects;
- 16.8.7.2 taking measures to address Data Security Incidents, including, where appropriate, measures to mitigate their possible adverse effects; and
- 16.8.7.3 conducting data protection impact assessments of any Processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly.

16.9 The Supplier will:

- 16.9.1 make available to Customer all information necessary to demonstrate compliance with the obligations set out in this **Condition 16**;
- 16.9.2 any notification made under this **Condition 16** must be made by e-mail to [\[privacy.uk@Wienerberger.com\]](mailto:privacy.uk@Wienerberger.com), unless Customer has given prior written consent for an alternative method of notification to be used;
- 16.9.3 allow for and contribute to audits, including inspections, conducted by Customer or another auditor mandated by Customer; and
- 16.9.4 prepare and securely maintain a record of all categories of Processing activities carried out under this Agreement in relation to the Contract Personal Data, including as a minimum: (i) its name and contact details and details of its Data Protection officer or other person with responsibility for data protection compliance; (ii) the categories of Processing it carries out on behalf of Customer; (iii) International Transfers; (iv) a general description of the technical and organisational security measures referred to in **Condition 16.8**; and (v) the same information in relation to any Sub-Processor, together with its name and contact details (together the "Data Record"). The Supplier will promptly upon request securely supply a copy of the Data Record to the Customer.

16.10 The Supplier will indemnify Customer against all liabilities, in each case arising out of or in connection with any breach by the Supplier or any Sub-Processor of any of its obligations under this **Condition 16** (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations) (whether such liability arises as a result of a mandatory or voluntary self-report by Customer or another third party to a Supervisory Authority).

Advertising Material / Announcements

The Supplier will not make (or permit to be made) any announcement, or any reference to the business relationship between the Supplier and Customer in any advertising material or other communication without the prior written consent of Customer, except if and to the extent required by Applicable Law or by any governmental or regulatory authority in which case the Supplier will promptly give written notice of such requirement to Customer.

Corporate Social Responsibility

Customer takes compliance with clearly defined corporate social responsibility (CSR) standards very seriously and conducts its business based on a set of core values as set out in the Customer Code of Conduct (a copy of which is located at www.wienerberger.com/content/dam/corp/corporate-website/downloads/other/Wienerberger_Code-of-Conduct_EN.pdf). The Customer Code of Conduct applies across Customer's business and to its employees and suppliers. The Supplier will comply with the Customer Code of Conduct, including the provisions in the Customer Code of Conduct that deal with fairness, diversity, and inclusion in relation to the supply of Goods and

Services and performance of this Agreement by the Supplier. In addition, Customer expects the Supplier to conduct its business in a socially responsible way and to deliver social value to individuals and local communities through its commercial activities and in conjunction with charitable organisations.

19. Termination of Contract

19.1 Customer may terminate the Contract in whole or in part immediately by giving written notice to that effect to the Supplier at least 21 days before the delivery date set out in the Order. If Customer exercises its right of termination under this **Condition 19.1** Customer's sole liability will be to pay to the Supplier fair and reasonable compensation for work in progress at the time of termination but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any consequential loss.

19.2 Without limiting its other rights or remedies (whether express or implied), Customer shall be entitled to terminate the Contract immediately by giving written notice to that effect to the Supplier, in particular if:

19.2.1 the Supplier commits a material breach of the Contract; or

19.2.2 circumstances have occurred which obviously render further proper performance of the Contract impossible.

19.3 Customer may terminate the Contract immediately by giving written notice to that effect to the Supplier if the Supplier:

19.3.1 has a receiver, administrator or provisional liquidator appointed;

19.3.2 is subject to a notice of intention to appoint an administrator;

19.3.3 passes a resolution for its winding-up (save for the purpose of a solvent restructuring);

19.3.4 has a winding up order made by a court in respect of it;

19.3.5 enters into any composition or arrangement with creditors (other than relating to a solvent restructuring);

19.3.6 ceases to carry on business;

19.3.7 is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction;

19.3.8 is the subject of any proceeding in any Member State of the European Union which is capable of recognition under the EC Regulation on Insolvency Proceedings (EC 1346/2000); or

19.3.9 is the subject of an application for the recognition of a foreign insolvency proceeding under the Cross-Border Insolvency Regulations 2006 (SI 2006/1030),

and the Supplier will notify Customer immediately upon the occurrence of any such event or circumstance.

19.4 In the event of termination of the Contract, Customer may, at its sole discretion, either retain Goods already delivered and/or Services already performed against payment of the pro-rata price or in the case of Goods send them back to the Supplier at the Supplier's own cost. In the event of termination of the Contract due to the Supplier's fault the Supplier shall also reimburse Customer such additional costs and expenses which result from the fact that the Order has to be passed on to a third party, if applicable. Following expiry or termination of the Contract any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force and all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.

19.5 Promptly after the date of expiry or termination of the Contract the Supplier will, subject to the exception set out in **Condition 19.6**, return to Customer and cease to use all of Customer's Confidential Information (including all copies and extracts) in its possession or control.

19.6 The Supplier may retain any of Customer's Confidential Information to the extent required to comply with any Applicable Law. The provisions of **Condition 15** will continue to apply to retained Confidential Information.

20. General

20.1 The Supplier will not sub-contract any of its obligations under the Contract without the prior written consent of Customer. Any sub-contracting will not relieve the Supplier from its liabilities to Customer under the Contract. The Supplier will be liable to Customer for the acts and omissions of its sub-contractors in relation to the Contract. This **Condition 20.1** is without prejudice to **Condition 16.3**.

20.2 Customer's customers, officers, employees, agents and sub-contractors will be entitled to enforce **Condition 11.5** subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of the Contract.

20.3 The parties may vary or rescind the Contract without the consent of Customer's customers, officers, employees, agents and sub-contractors

20.4 Save as provided in **Condition 20.2** the parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

20.5 Customer's rights and remedies set out in these Conditions are in addition to and not exclusive of any rights and remedies provided by law.

20.6 If any term of the Contract is found by any court or body of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.

20.7 The Supplier acknowledges that Customer is working towards an ISO50001 accreditation and that any procurement of products from the Supplier (in particular, those products that have or may have an impact on significant energy use) will be evaluated by Customer on the basis of energy performance. The Supplier will at all times be proactive in offering energy efficient products to Customer where these are available.

20.8 Unless the context otherwise requires, any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them.

21. Applicable Law

The Contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.

Legal Venue

Subject to **Conditions 22.2** and **22.3**, the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).

22.2 If the Supplier's registered office is situated outside the EU, Customer retains the right to refer (at its sole option) all disputes arising out of or in connection with the Contract or referring to violation, termination or nullity of the same to be finally settled according to the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber (Vienna Rules) by three arbitrators appointed in accordance with the said Rules.

22.3 Either party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.

22.4 The Supplier waives any objection to, and agrees to submit to, the jurisdiction of the court referred to in **Condition 22.1** and (where applicable) the arbitral institution under its designated set of Rules referred to in **Condition 22.2**. The Supplier agrees that (a) a judgment or order of the court referred to in **Condition 22.1** is binding upon it and may be enforced against it in the courts of any other jurisdiction and (b) a judgment on the award rendered by the arbitrators referred to in **Condition 22.2** may be entered in any court having jurisdiction thereof.

22.5 The Contract and these Conditions will be governed by the law of England and Wales.