TOMATO GLASSES UK
www.tomatoglassesuk.com

Terms & Conditions for Sale of Goods

1 **Interpretation**

1.1 **Definitions**:

Application Form	the standard form that all potential Buyers must complete in order to apply to become an Authorised Retailer and, to the extent applicable, a Stockist of the Seller.
Authorised Retailer	a Buyer that has been appointed as a member of the Seller's Network authorised to operate at the retail level of trade in accordance with these Conditions.
Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Business Hours	the period from 9.00 am to 5.00 pm on any Business Day.
Buyer	means the organisation or person who applies to be appointed as an Authorised Retailer of the Seller and who buys the Goods from the Seller following such appointment.
Conditions	the terms and conditions set out in this document as amended from time to time in accordance with clause 15.4.
Contract	the contract between the Seller and the Buyer for the appointment of the Buyer as an Authorised Retailer and, where applicable, a Stockist of the Seller and for the sale and purchase of the Goods, in accordance with these Conditions.
control	the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls** and **controlled** shall be interpreted accordingly.
Delivery Location	has the meaning given in clause 5.2.
Exclusive Area	has the meaning given in clause 11.3.2.
Force Majeure Event	an event, circumstance or cause beyond a party's reasonable control.
Goods	means the articles, as set out in the Order, to be supplied to the Buyer by the Seller.
Order	the Buyer's order for the Goods, as set out: (a) in an email sent from the Buyer to the Seller; (b) by the Buyer over the telephone to the Seller; or (c) in the Buyer's online order (placed by following the

	onscreen prompts through the Buyer's opticians login on the Seller's website), as the case may be.
Rural Area	centres with populations of less than 10,000 people.
Selective Distribution System	a distribution system where the seller undertakes to sell the contract goods or services, whether directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to unauthorised distributors within the territory reserved by the seller to operate that system.
Seller	means Tots Specs Ltd, a company incorporated in England and Wales whose registered address is at Unit 9, South Farm Court, South Farm Road, Budleigh Salterton, Devon EX9 7AY.
Seller's Network	the Selective Distribution System established by the Seller for the distribution of the Goods within the UK and the Republic of Ireland.
Semi-Urban Area	centres with populations of 10,000 people and above, but less than 100,000 people.
Stockist	an Authorised Retailer who has satisfied certain specified criteria and who the Seller agrees to list as a stockist of its goods pursuant to clause 11 of these Conditions.
Urban Area	centres with populations of 100,000 people and above.
Warranty Period	has the meaning given in clause 6.1.

1.2 **Interpretation**:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

1.2.4 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** excludes fax but not email.

2 Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing, unless the parties expressly agree in writing that such terms shall apply to the Contract and take precedence over these Conditions.

2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate. ***Please note****: before placing any Order, the Buyer must have been appointed as an Authorised Retailer of the Goods in accordance with clause 3 and such appointment must remain in force at the time the Order is placed. The Seller will not accept any Orders placed by a Buyer who is not an Authorised Retailer on the Order date.*

2.3 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point and on which date the Contract shall come into existence.

2.4 Any samples, drawings or advertising produced by the Seller and any illustrations contained in the Seller's catalogues or brochures or on the Seller's website are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

3 Authorised Retailers

3.1 Prior to placing any Order for Goods with the Seller, the Buyer must submit (via email or post) an Application Form to the Seller requesting appointment as an Authorised Retailer. As well as submitting an Application Form, the Buyer must:

3.1.1 be able to demonstrate that it satisfies the following criteria at the Application Form submission date:

(a) the Buyer has a TrustScore of 4.5 or more;

(b) all frame and glasses fittings carried out by the Buyer are carried out by a dispensing optician; and

(c) to the extent applicable, the Buyer is up-to-date with all Companies House filings.

3.2 On review of the Buyer's Application Form, provided the Buyer satisfies the requirements listed in clause 3.1, the Seller will appoint the Buyer as an Authorised Retailer within the Seller's Network for a period of 12 months (from the date of notification). As an Authorised Retailer, the Buyer (pursuant to such appointment) is granted a licence to market and resell the Goods throughout the UK and the Republic of Ireland on the terms set out in these Conditions.

3.3 As an Authorised Retailer, the Buyer agrees to:

3.3.1 purchase all its requirements for the Goods either from the Seller or from another distributor authorised by the Seller within the Seller's Network;

3.3.2 at its own entire discretion determine the prices at which and (except as specifically provided in this Agreement) the terms and conditions on which it sells the Goods;

3.3.3 not supply the Goods to distributors, retailers, or other resellers within the UK or the Republic of Ireland who are not members of the Seller's Network;

3.3.4 not establish or maintain outside the UK or the Republic of Ireland any branch, sales outlet, warehouse or distribution depot for the sale of the Goods; and

3.3.5 not copy the Goods or to manufacture its own versions of the Goods nor shall the Buyer authorise any third party so to do.

3.4 Nothing in these Conditions shall be interpreted as restricting active or passive sales by an Authorised Retailer to end-users within the UK or the Republic of Ireland (including sales via the internet).

3.5 The Buyer shall buy the Goods for its own account for resale under these Conditions and shall not act as, or represent itself as, an agent of the Seller for any purpose or otherwise attempt to commit the Seller under any legally binding agreement.

3.6 Whilst the Buyer is appointed as an Authorised Retailer of the Seller, the Buyer must continue to meet the requirements set out in clause 3.1 and comply with clause 3.3. The Seller may terminate the Buyer's appointment as an Authorised Retailer at any time if the Buyer fails to meet the requirements set out in clause 3.1 or comply with clause 3.3.

3.7 Once the Buyer's 12 month appointment as an Authorised Retailer expires, the Buyer may submit a new Application Form to the Seller in accordance with clause 3.1 requesting reappointment as an Authorised Retailer.

4 Goods

4.1 The Goods are described in the Seller's catalogues and brochures and on the Seller's website.

4.2 The Seller reserves the right to amend the specification of Goods if required by any applicable statutory or regulatory requirement and the Seller shall notify the Buyer in any such event.

5 Delivery

5.1 The Seller shall ensure that each delivery of the Goods is accompanied by an invoice that shows the date of the Order, the contract number, the type, price and quantity of the Goods (including the code number of the Goods, where applicable) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered. An electronic copy of the invoice shall be provided to the Buyer via email on the same day that the Goods are dispatched.

5.2 Unless otherwise agreed between the parties in writing, the Seller shall deliver (whether itself or via a third party delivery partner) the Goods to the location set out in the Order or such other location as the parties may agree in writing (**Delivery Location**). The Delivery Location must be situated within the United Kingdom or the Republic of Ireland.

5.3 Where the Delivery Location stated is situated within the Republic of Ireland, unless the Seller expressly agrees otherwise in writing, the Buyer shall be responsible for arranging all customs clearances and for payment of all import taxes and other customs duties arising from the delivery of Goods.

5.4 The Seller will provide an estimated delivery date (which will be within 30 days of the date on which the Seller issues written acceptance of the Order provided the Goods are in stock) and, upon dispatch, notify the Buyer that the Goods have been dispatched to the Buyer and, where necessary, provide an updated estimated delivery date.

5.5 Delivery is completed once the Goods have been placed at the Buyer's disposal at the Delivery Location.

5.6 Any dates quoted for delivery are approximate only and time for delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or by the Buyer's failure to provide the Seller with adequate delivery instructions (or any other instructions that are relevant to the supply of the Goods) or the Buyer's failure to take delivery for the Goods at the Delivery Location.

5.7 If the Seller fails to deliver the Goods, its liability shall be limited to the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Buyer with adequate delivery instructions (or any other instructions that are relevant to the supply of the Goods) or the Buyer's failure to take delivery for the Goods at the Delivery Location.

5.8 If the Buyer fails to take delivery of the Goods when delivery is first attempted then, except where such failure or delay is caused by a Force Majeure Event or by the Seller's failure to comply with its obligations under the Contract in respect of the Goods:

5.8.1 delivery of the Goods shall be deemed to have been completed at 5.00pm on the date that delivery was first attempted; and

5.8.2 the Seller will store the Goods until actual delivery (or collection) takes place and charge the Buyer for all related costs and expenses (including insurance).

5.9 Notwithstanding the terms set out in clause 5.8, the Seller (or its third party delivery partner) may, but shall not be obliged to, make a further attempt(s) to deliver the Goods to the Delivery Location and/or to leave a delivery note requiring the Buyer to collect the Goods from a specified collection point within a specified time period.

5.10 If ten Business Days after the day on which the Seller first attempted to deliver the Goods to the Buyer, the Buyer has not taken delivery of the Goods (or collected them, as applicable), the Seller may resell or otherwise dispose of all or part of the Goods.

5.11 The Seller may deliver the Goods by instalments, and each instalment shall be listed separately in the Supplier's monthly statements (and instalments of the same Order may be listed and be payable under different statements depending on when the relevant instalment is delivered). Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

5.12 The Buyer shall notify the Seller promptly upon becoming aware (and in any event within 5 Business Days of the delivery date) of any discrepancy between the quantity ordered and the quantity delivered (including any shortages, over deliveries and/or duplicate orders). The Seller shall promptly send any missing Goods to the Buyer or provide instructions for the Buyer to return additional Goods to the Seller, each at the Seller's cost.

6 Quality

6.1 The Seller warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:

6.1.1 conform in all material respects with their description; and

6.1.2 be free from material defects in design, material and workmanship.

6.2 Subject to clause 6.3 and clause 6.4, if:

6.2.1 the Buyer gives notice in writing to the Seller during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1; and

6.2.2 the Seller is given a reasonable opportunity of examining such Goods; and

6.2.3 the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost,

the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.3 The Seller shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 if:

6.3.1 the Buyer makes any further use of such Goods after giving notice in accordance with clause 6.2;

6.3.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, care (including use of solvent cleaning sprays), fitting or use of the Goods or (if there are none) good trade practice regarding the same;

6.3.3 the Buyer alters or repairs such Goods without the written consent of the Seller;

6.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage;

6.3.5 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or

6.3.6 the defect arises in respect of repaired or replacement Goods supplied by the Seller under this clause 6.

6.4 The Buyer shall be entitled to only one repair, replacement or refund (at the Seller's option, pursuant to clause 6.2) per item under the warranty set out in this clause 6.

6.5 The warranty set out in this clause 6 is provided by the Seller to the Buyer only and the Buyer may not transfer or assign the warranty to any third party (including any customer of the Buyer).

6.6 Except as provided in this clause 6, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

7 Title and risk

7.1 The risk in the Goods shall pass to the Buyer on completion of delivery.

7.2 Title to the Goods shall not pass to the Buyer until the earlier of:

7.2.1 the Seller receives payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; or

7.2.2 the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 7.4.

7.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

7.3.1 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;

7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

7.3.3 not tamper with, adjust, use or attach any stickers, embellishments, adhesives or other substances to the Goods;

7.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

7.3.5 notify the Seller immediately if it becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4; and

7.3.6 give the Seller such information as the Seller may reasonably require from time to time relating to:

(a) the Goods; and

(b) the ongoing financial position of the Buyer.

7.4 Subject to clause 7.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:

7.4.1 it does so as principal and not as the Seller's agent; and

7.4.2 title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

7.5 At any time before title to the Goods passes to the Buyer, the Seller may:

7.5.1 by notice in writing, terminate the Buyer's right under clause 7.4 to resell the Goods or use them in the ordinary course of its business; and

7.5.2 require the Buyer to deliver up all Goods in its possession that have not been resold and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

8 Price and Payment

8.1 The price of the Goods shall be the price set out in the Order (or otherwise agreed in writing by the Seller), or, if no price is set out or agreed, the price set out in the Seller's published trade price list in force as at the date of dispatch.

8.2 The Seller may, by giving notice to the Buyer at any time up to three Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

8.2.1 any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

8.2.2 any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered; or

8.2.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

8.3 The price of the Goods:

8.3.1 excludes amounts in respect of value added tax (**VAT**), which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice; and

8.3.2 excludes the costs of transport of the Goods, which shall be invoiced to the Buyer.

8.4 Subject to clause 9 and clause 8.8.2, unless otherwise agreed between the parties in writing, the Seller may issue a statement to the Buyer requiring payment for the Goods on or at any time after the last day of the month in which the relevant Order is accepted by the Seller.

8.5 At the end of each month the Seller shall submit, or cause to be submitted, to the Buyer a written statement setting out the total sums payable to the Seller by the Buyer in respect of all Goods for which the relevant Order was accepted by the Seller during the relevant month. The statement shall record the calculation of the total sum payable, as reflected by the relevant invoices.

8.6 The Buyer shall pay each statement submitted by the Seller:

8.6.1 within 30 days of the date of the statement or in accordance with any credit terms agreed by the Seller and confirmed in writing to the Buyer;

8.6.2 in full and in cleared funds to a bank account nominated in writing by the Seller, and

time for payment shall be of the essence of the Contract.

8.7 For the avoidance of doubt, the Seller shall ensure that each delivery of the Goods is accompanied by a paper invoice (setting out the detail outlined in clause 5.1). Electronic copies of invoices shall also be shared with the Buyer on the date relevant Goods are dispatched. However, the Seller's payment terms run from the relevant statement date (and not from the paper or digital invoice date).

8.8 If the Buyer fails to make a payment due to the Seller under the Contract by the due date, then, without limiting the Seller's remedies under clause 13:

8.8.1 the Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.7 will accrue each day at 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is below 0%;

8.8.2 the Seller reserves the right to:

(a) require the Buyer to make payment in advance in respect of any Order already placed but not yet delivered and/or any future Order placed by the Buyer; and/or

(b) cancel any other Order already placed by the Buyer but not yet delivered without liability to the Buyer.

8.9 The Seller reserves the right to require the Buyer to pay for the Goods up front (prior to dispatch) should the Seller (acting in its sole discretion) have any concerns as to the Buyer's financial position and its ability to settle the Seller's invoices in accordance with these Conditions. Where the Seller wishes to exercise this right, it will notify the Buyer prior to accepting the Buyer's Order (also setting out the total amount to be paid for the Goods prior to dispatch). The Seller will issue written acceptance of the Buyer's Order only once it has received payment of the relevant sum in full and in cleared funds.

8.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9 Frames on approval

9.1 The Seller may agree (at its sole discretion) to supply up to four Goods to the Buyer at any one time on an approval basis (i.e. up to five Goods may be supplied to the Buyer on a trial basis for the purposes of enabling the Buyer's end customer to try those Goods prior to purchase).

9.2 Where the Seller agrees to supply certain Goods to the Buyer on an approval basis, the Seller shall supply the Goods to the Buyer is accordance with these Conditions save that:

9.2.1 the Buyer must, at its cost, return those Goods supplied to the Buyer on an approval basis, save for those Goods which the Buyer wishes to purchase, to the Seller within 21 days of the date of delivery of the relevant Goods at the Delivery Location (**Approval Period**) in accordance with clause 10;

9.2.2 the Seller may issue a statement to the Buyer in respect of those Goods not returned to it within the Approval Period on or at any time after the last day of the month in which the Approval Period ends in accordance with clause 8; and

9.2.3 any failure (for any reason) to return the Goods to the Seller within the Approval Period shall result in the Buyer being charged in full for the relevant Goods.

10 Returns

10.1 Unless otherwise agreed in writing by the Seller in advance of sale, returns shall only be accepted by the Seller in those circumstances set out in clause 6.2 and clause 8.1.

10.2 Regardless of the reason for the return, prior to returning Goods the Buyer shall contact the Seller (either by telephone or email) to request a returns number. Any returns number issued by the Seller must be clearly referenced on (or inside) the parcel in which returned Goods are included.

10.3 Where the Seller has agreed to accept a return of Goods that are not damaged (including where Goods are returned pursuant to clause 9), the Buyer will be responsible for all costs associated with the return.

10.4 Returns will only be accepted if the Goods are returned:

10.4.1 in their original product packaging and with all original labels attached and in a condition that the Goods can be resold at full price (save where the Goods are being returned due to damage); and

10.4.2 in the parcel packaging / box which they were originally sent in or in such other parcel packaging / box so as to protect the Goods from damage (or further damage) during return transit (please do not return Goods in Jiffy bags – Goods returned in this manner will not be accepted for return).

10.5 Risk in all returned Goods remains with the Buyer until the Goods are received by the Seller. The Buyer is strongly advised to use a tracked delivery service or courier to return the Goods and to obtain suitable insurance (to the full value of the Goods).

10.6 Upon receipt of returned Goods by the Seller, returns will be processed by the Seller as soon as reasonably practicable and, where applicable, refunds and/or credit notes issued within 30 days of receipt.

11 **Stockists**

11.1 This clause shall apply only where a Buyer wishes to be appointed as a Stockist of the Seller.

11.2 To be listed as a Stockist of the Seller, a Buyer must submit (via email or post) an Application Form to the Seller requesting to be appointed as a Stockist of the Seller. As well as completing the Application Form, the Buyer must:

11.2.1 be able to demonstrate that, at the date of submission of the Application Form, it satisfies the following criteria:

(a) the Buyer is an Authorised Retailer of the Seller;

(b) the Buyer has a TrustScore of 4.5 or more;

(c) all frame and glasses fittings carried out by the Buyer are carried out by a dispensing optician;

(d) it holds in stock an eight-frame fitting set (as described in the Seller's catalogues and brochures and on the Seller's website from time to time),

11.2.2 represent and warrant to the Supplier that, on being listed as a Stockist, it will:

(a) at all times during such listing maintain in stock a complete eight-frame fitting set (as described in the Seller's catalogues and brochures and on the Seller's website from time to time);

(b) place at least one Order for Goods during the first three months of being listed as a Stockist;

(c) place not less than eight Orders for Goods during each 12 month period of its listing (and each Order must include at least one set of frames); and

(d) pay all undisputed statements in full on or before the relevant due date; and

11.2.3 consent to being listed on the Seller's "stockist map" on the Seller's website.

11.3 On review of the Buyer's Application Form, provided the Buyer satisfies the requirements listed in clause 11.111.2~~11.2~~, the Seller will:

11.3.1 for a period of 12 months (from the notification date) list the Buyer as a Stockist of the Seller on its website; and

11.3.2 notify the Buyer of the scope of the area within which they are granted exclusivity pursuant to clause 11.4 of these Conditions (the **Exclusive Area**).

11.4 The Seller agrees, for the period which the Buyer is listed as a Stockist of the Seller pursuant with clause 11.3.1, not to supply goods to any other opticians within the Exclusive Area assigned to the Buyer without the Buyer's prior written approval.

11.5 The scope of the Buyer's Exclusive Area shall be determined as follows:

11.5.1 for each of the Buyer's stores located within an Urban Area, the Exclusive Area shall have a radius equivalent to a 20-minute walk in each direction from the store;

11.5.2 for each of the Buyer's stores located within a Semi-Urban Area, the Exclusive Area shall have a radius equivalent to a 15-minute drive in each direction from the store; and

11.5.3 for each of the Buyer's stores located within a Rural Area, the Exclusive Area shall have a radius equivalent to a 35-minute drive in each direction from the store.

11.6 Whilst the Buyer is listed as a Stockist of the Seller, the Buyer must at all times comply with the warranties set out in clause 11.2.2 and maintain its appointment as an Authorised Retailer of the Seller. The Seller may de-list the Buyer as a Stockist at any time if the Buyer fails to comply with the warranties set out in clause 11.2.2 or ceases to be an Authorised Retailer of the Seller.

11.7 Once the 12 month listing period referred to in clause 11.3.1 expires, the Buyer may submit a new Application Form to the Seller in accordance with clause 11.2.

12 Limitation of liability

12.1 References to liability in this clause 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 Nothing in the Contract limits any liability for:

12.2.1 death or personal injury caused by negligence;

12.2.2 fraud or fraudulent misrepresentation;

12.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

12.2.4 defective products under the Consumer Protection Act 1987; or

12.2.5 any liability that legally cannot be limited.

12.3 Subject to clause 12.2, the Seller's total liability to the Buyer shall not exceed the greater of: (1) the total value of all Goods purchased by the Buyer from the Seller in the 6 months preceding the event giving rise to the claim; or (2) the sum of £5,000.

12.4 Subject to clause 12.2, the following types of loss are wholly excluded:

12.4.1 loss of profits;

12.4.2 loss of sales or business;

12.4.3 loss of agreements or contracts;

12.4.4 loss of anticipated savings;

12.4.5 loss of use or corruption of software, data or information;

12.4.6 loss of or damage to goodwill; and

12.4.7 indirect or consequential loss.

12.5 This clause 12 shall survive termination of the Contract.

13 **Termination**

13.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:

13.1.1 the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

13.1.2 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

13.1.3 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

13.1.4 the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4, or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

13.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

13.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt.

13.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

14 Force Majeure

The Seller shall not be in breach of the Contract or otherwise liable for any delay or failure to perform any of its obligations if such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 6 weeks, the Buyer may terminate the Contract by giving 7 days' written notice to the Seller.

15 General

15.1 Assignment and other dealings.

15.1.1 The Seller may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

15.1.2 The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

15.2 Confidentiality.

15.2.1 Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.2.2.

15.2.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15.2; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.2.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

15.3 **Entire agreement.**

15.3.1 The Contract constitutes the entire agreement between the parties.

15.3.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

15.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.5 **Waiver.**

15.5.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

15.5.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

15.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 15.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.7 **Notices.**

15.7.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(ii) sent by email to the addresses set out in the Order (or an address substituted in writing by the party to be served).

15.7.2 Any notice shall be deemed to have been received:

(iii) if delivered by hand, at the time the notice is left at the proper address;

(iv) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

(v) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

15.7.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15.8 **Third party rights.**

15.8.1 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

15.8.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

15.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

15.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.