

1. DEFINITIONS

- 1.1 In these Terms of Sale: **“we”** or **“us”** means the David Brown Santasalo entity which (as the case may be) issues the quotation or order confirmation which refers to, incorporates or accompanies these Conditions; **“you”** means the person who is party to the Contract with us; **“Business Day”** means, in respect of any notice to be served under or in connection with the Contract, any day (other than a Saturday or a Sunday) on which banks in the town in which the recipient has its principal place of business are open for business; **“these Conditions”** means these Terms and Conditions of Sale and Service; **“Contract”** means the contract for the supply by us of the Goods and/or Services to you; **“Customer Inputs”** means any inventions, documents, images, photographs, drawings, specifications, schematics, models, data, test results, computer software, prototypes and materials provided, created or disclosed by you to us in connection with the Contract; **“Intellectual Property Rights”** means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; **“Goods”** means goods which we are to supply to you under the Contract, as set out in the Order, but excluding Spares; **“Order”** means our written confirmation of your order for the Goods and Services, which refers to these Terms of Sale; **“Place of Delivery”** the place (other than our own premises) to which the Goods are to be delivered, as specified in the Order or as subsequently agreed by the parties in writing; **“Premises”** means our premises, as stated on the Order or subsequently advised to you; **“Price”** means the price for the Goods and/or Services in question; **“Services”** means any repair, maintenance, inspection, testing, overhaul, installation supervision or commissioning services to be supplied under the Contract, as set out in the Order; **“Spares”** means any parts, components and materials which we supply to you in the course of performing Services (for example, parts incorporated into equipment which you give us for repair); **“Specification”** means any specification for Goods or Services referred to in the Order or otherwise agreed in writing by the parties; and **“Warranty Period”** means: for Goods, the period of time beginning on the date on which the relevant Goods are delivered to you and ending on the earlier of the date falling 18 (eighteen) months thereafter and the first anniversary of the date on which the Goods are first used; or in the case of Spares, the period of time beginning on the date on which the relevant Spares or the equipment into which we have incorporated the Spares (as applicable) are delivered to you and ending on the earlier of the date falling 18 (eighteen) months thereafter and the date on which the Spares or the equipment into which we have incorporated the Spares (as applicable) are/is first used.
- 1.2 Furthermore: a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); by the **“parties”**, we mean you and us and a reference to a party includes its personal representatives, successors or permitted assigns; the masculine gender shall include the feminine and the singular shall include the plural and, in both cases, vice versa; any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and a reference to writing or written includes faxes and emails.

2. QUOTATIONS AND BASIS OF CONTRACT

- 2.1 Our quotations (also known as “proposals”) are not offers capable of acceptance. Any prices, specifications or other commercial terms or details specified in them are indicative only and not legally binding. Without prejudice to that, prices quoted shall only be valid for 30 (thirty) days, unless otherwise stated in the quotation.
- 2.2 The Contract is comprised of the Order, these Conditions, applicable Specification(s), and any other documents referred to in the Order. For the purposes of interpretation, the constituent parts of the Contract shall rank in that order, with the Order being of the highest rank, these Conditions being of the second highest rank and so on. In the event of any ambiguity or conflict between any term or condition of any of the constituent parts of the Contract, those of the higher-ranking part shall prevail over those of the lower ranking part.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms or conditions that you may seek, or may already have sought, to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any purchase order previously or subsequently issued by you shall not form part of the Contract. No contract shall come into force until we have issued the Order. Neither the Order nor these Conditions is an acceptance of any offer or counteroffer made or purchase order submitted by you, and the Contract is expressly conditioned upon your assent to the terms of the Contract, which shall be presumed from your receipt of the Order or from your acceptance of all or any part of the Goods or Services ordered. You are responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.4 Any photographs, diagrams, drawings, images and illustrations contained in our catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods or Services described in them. They shall not form part of the Contract or have any contractual force.

3. SUPPLY

- 3.1 In consideration for you paying the price for the Goods and Services, we shall supply the Goods and perform the Services to/for you in accordance with the Contract.
- 3.2 We reserve the right to amend or deviate from any Specification if required by any applicable statutory or regulatory requirements. If this happens, we will inform you without undue delay and, in any event, prior to dispatch of such Goods.

4. CANCELLATION OF ORDERS

- 4.1 To the maximum extent permissible by law, once the Contract is in force your order for the Goods and Services cannot be cancelled, in whole or in part, without our express consent. We reserve the right to withhold such consent for any reason but, if we accept your cancellation, we shall be entitled to charge you for expense already incurred, commitments already made, overhead, and reasonable profit associated with the cancelled Contract.

5. DELIVERY OF GOODS

- 5.1 Unless the Order states otherwise, we shall deliver the Goods to the Place of Delivery and our charges for doing so (if any) shall be as stated on the Order or as otherwise agreed between us in writing. Furthermore, in the case of international supplies of Goods the relevant version of the International Commercial Terms published by the International Chamber of Commerce 2020 version (better known as the “INCOTERMS”) specified on the Order shall apply. If the Order is silent on this issue, the Goods shall be supplied on a Free Carrier (FCA) basis from the Premises.
- 5.2 If we are to supply Goods to you on an Ex Works (EXW) or Free Carrier (FCA) basis and you fail to collect the Goods from our Premises within 30 (thirty) days of us notifying you that they are ready for collection we shall be entitled to store the Goods pending collection at your risk and expense.
- 5.3 Goods delivered may not be rejected. Any defects or non-conformities or damage to delivered Goods shall fall to be dealt with under the warranty terms in clause 12 below.
- 5.4 Although we always strive to ensure that deliveries are made within a reasonable time, any dates or timeframes quoted for delivery or performance (as the case may be) are to be treated as estimates only and are not binding.

6. TITLE AND RISK OF LOSS

- 6.1 You shall not obtain valid title to any Goods or Spares until you have paid for them in full. Until that time, we shall retain title to the Goods. In the event that you fail to pay in full for any Goods by the due date for payment, we reserve the right to require you to deliver the Goods to us and/or to retake possession of such Goods and you hereby authorize us and our representatives, agents and employees to, (except in case of emergency) having given reasonable notice to you and at reasonable hours, enter upon any premises owned or occupied by you at which such Goods are located or stored for the purpose of retaking possession.
- 6.2 Risk in Goods shall pass in accordance with the applicable Incoterms, subject to clause 5.2 above.

7. PERFORMANCE OF SERVICES

- 7.1 Any Services we perform under the Contract shall be performed by persons who have enough skills, knowledge, experience and qualifications to perform them.

- 7.2 Any dates or timeframes quoted by us for performance of the Services are indicative only and are not legally binding, if we will, to the extent possible, provide the Services within a reasonable period.
- 7.3 Where any part of the Services are to be performed at any site other than our own Premises; you will ensure that we and our representatives are granted access to the relevant site at the appointed time or (if there is no appointed time) during normal business hours at the relevant location provided we have given reasonable prior notice of arrival; you shall ensure we are provided with the use and benefit of all necessary cranes, lifting equipment, equipment for on-site transport of people equipment and materials, auxiliary tools, machinery, materials and suppliers (including fuel, oils, grease, gas, water, electricity steam, compressed air, hearing, lighting etc.) and of the measuring and testing instruments present on site, all at no cost to us unless otherwise we expressly agree otherwise in writing or in the Contract; you will also inform us, a reasonable time before we are scheduled to start the relevant work, of all relevant safety, security and environmental policies, rules, regulations and laws in force at the relevant location; you will provide us with the necessary storage facilities for secure and safe storage of our equipment, materials and tools and of the personal effects of our representatives; you will, without delay, provide us with such information as we may reasonably request about the conditions of the location; and you will use ensure that the site is at all relevant times in a condition which does not pose risks to the health or safety of our personnel or poses risks of damage to or deterioration of our property.
- 7.4 If performance of the Services requires that we take custody of property owned or controlled by you, you shall be responsible for delivering such property into our custody at the Premises at your own expense. Your property shall be at our risk during any time it is within our custody. Upon completion of the Services we shall notify you that the property is ready for collection from the Premises. Should you fail to collect within 48 hours of being notified, we shall store the property at your expense and risk. Should you fail to collect the property within 30 (thirty) days of being notified, we shall be entitled to sell the property and account to you for the proceeds of sale, less any sums due to us under the Contract and the expenses of the sale itself. However, should the Contract specify that we shall, or we subsequently agree to, deliver the property back to you, the terms of clause 5 above shall apply to such delivery, substituting references to "the Goods" for references to "your property".

8. PRICE

- 8.1 The Price shall be the price set out in the Order or, in the absence of being set out in the Order, in our written quotation, or in the absence of a quotation, in our published price list in force at the date of acceptance of your Order.
- 8.2 Unless otherwise explicitly stated or agreed, the Price excludes applicable sales and all other taxes, duties, tariffs and levies that may be applicable to the supply of the Goods or Services in question. To the extent that any such taxes, duties or levies are applicable to the transaction, you shall be liable to pay them in addition to the Price. Unless otherwise specified, all prices are quoted in US Dollars. Furthermore, unless explicitly stated the Price excludes the costs of packing and transportation, for which we shall be entitled to charge surcharge. Finally, the Price of Services is exclusive of any accommodation, subsistence and accommodation expenses, which we shall be entitled to recharge to you.
- 8.3 We may, by giving notice to you at any time before delivery of the Goods or completion of performance of the Services (as applicable), increase the Price to reflect any increase in the cost of the Goods and/or Services that is due to: any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labor, materials and other manufacturing costs); any request by you to change the delivery date(s), quantities or types of Goods ordered, the Specification or the scope, nature or time of performance of the Services; any delay caused by your instructions or your failure to give us adequate or accurate information or instructions; any delay in your delivery to us of your property; or unforeseen conditions or circumstances at any site at which Services are to be performed.

9. PAYMENT TERMS

- 9.1 Unless the Order specifies otherwise, you must pay in full for Goods prior to dispatch or collection (as the case may be) and for Services prior to them being performed. If payment of any instalment of the Price is tied to any event (e.g. delivery) which is delayed by your actions, omissions or instructions, or those of others for whom you are responsible (including your own customers or suppliers of any tier), payment shall become due when that event was originally scheduled to have occurred.
- 9.2 Any expenses (including legal fees and expenses) incurred by us in recovery of debts owed by you are to be reimbursed by you. This will not apply to the extent that we are at fault for your non-payment of an invoice.
- 9.3 Any sums to be paid by you under the Contract must be paid without any deduction or withholding and you shall not be entitled to assert any credit, set-off or counterclaim against us under this Contract or under any other contract between the parties, in order to justify withholding payment of any such amount in whole or in part. We may at any time, without limiting any other rights or remedies we may have, set off any amount you owe us against any amount we owe you, under this Contract or any other.
- 9.4 Without prejudice to our other remedies under the contract, we shall be entitled to charge a delinquency charge on all overdue sums which you owe us of 1% (one per cent) per month from the due date to the actual date of payment.

10. SECURITY AGREEMENT AND INSURANCE

- 10.1 To secure payment of the price payable under the Contract and performance of all of your obligations under the Contract, you hereby: (i) grant to us a purchase money security interest in all Goods; and (ii) authorize us to file such financing statements and other documents, and agree to execute such other documents and to do such other acts, as we may reasonably deem necessary or advisable to protect our rights in such Goods. In the event you are in default under the Contract, we shall have all the rights and remedies of a secured creditor under the Uniform Commercial Code.
- 10.2 Until we have received full payment of the price payable under the Contract, you shall (i) maintain insurance covering all Goods in such amounts and against such risks as is customary by companies engaged in the same or similar business and similarly located, naming us as insured or coinsured, and shall, upon our request, furnish evidence of such insurance satisfactory to us, and (ii) upon request by us, do all things necessary or desirable to adequately insure the Goods against loss or damage.

11. INTELLECTUAL PROPERTY

- 11.1 You hereby acknowledge that nothing in the Contract shall be deemed to transfer or create any license in your favor in respect of any Intellectual Property Rights owned and/or licensed by us. We shall own the Intellectual Property Rights in any documents, materials, inventions, diagrams, schematics, drawings, specifications, test results, data, software, images, photographs, blueprints and things that we create, conceive of, modify, provide or disclose in connection with the Contract.
- 11.2 **You shall defend, hold harmless and indemnify us (on demand) against all losses, damages, costs, claims, expenses (including legal fees and expenses) and liabilities incurred by us, or for which we may become liable, in connection with any allegation, suit, demand, action or legal proceeding made against us for actual or alleged infringement of the Intellectual Property Rights of any third party arising out of or in connection with our use of any Customer Inputs.**
- 11.3 You hereby grant us an irrevocable, royalty-free, sub-licensable, worldwide license to do all such acts and things as we may reasonably require to do in respect of any Customer Inputs and any of your Intellectual Property Rights for the purpose of enabling us to comply with our obligations under the Contract. To the extent that the Intellectual Property Rights in any Customer Inputs are owned by any third party, you shall procure (at your own expense) from such third party an applicable license permitting our use of such Customer Inputs.

12. WARRANTIES

- 12.1 **Goods and Spares warranties.** We hereby warrant that if, within the Warranty Period, any Goods (other than Goods excluded from the scope of this warranty, as identified below) or Spares are found: to be defective in design, materials or workmanship; and/or not to conform with their description in all material respects and any applicable Specification, then we will, at our option, either repair such Goods/Spares so as to make them non-defective or conforming (as the case may be) or replace them with non-defective or conforming Goods/Spares. Our obligations under this clause 12.1 are conditional upon: you notifying us of the defect or non-conformance within 7 (seven) days of becoming aware of same and, in any event, within the Warranty Period or, in the case of a non-conformance which would have been apparent to any reasonably skilled person carrying out a visual inspection of the Goods/Spares upon delivery, within 30 (thirty) days of delivery; you providing us with a reasonable opportunity to perform all appropriate tests on allegedly defective or non-conforming Goods/Spares; and if we request that you do so, you returning the allegedly defective or non-conforming

Goods/Spares to one of our designated service centers within 14 (fourteen) days of our request. If, at our request, you return Goods/Spares which are alleged to be defective or non-conforming to one of our service centers, we shall reimburse you in respect of all packing and transportation costs reasonably and properly incurred by you after we have determined that the Goods/Spares are in fact defective or non-conforming. Any defective or non-conforming Goods/Spares which we replace will become our property upon delivery of the replacement Goods/Spares, which will be delivered to your site free of charge. If we choose to repair or replace defective or non-conforming Goods/Spares, we may elect to do so either at one of our designated service centers or on-site. If we elect to repair or replace such Goods/Spares on-site, we shall arrange an appointment with you and you shall ensure that we and our agents are granted access to the location at which such Goods/Spares are situated at the appointed time. You acknowledge that several appointments may be required to implement a successful repair or replacement. The warranties in this clause 12.1 shall apply to replacement Goods/Spares and repaired Goods/Spares just as they applied to the defective or non-conforming Goods/Spares that were replaced or repaired except that the Warranty Period shall expire on the later of (i) 12 (twelve) months from the date of delivery of the replacement Goods/Spares or from the date of repair (as the case may be) and (ii) the date that the original Warranty Period on the defective Goods/Spares which were replaced or repaired (as the case may be) would have expired.

12.2 **Services warranty.** We also warrant that the Services will be free from material defects in workmanship. Should you wish to make a claim under this warranty, you must notify us of the claim within three months of the Services being performed. In the event of a valid warranty claim, we will (at our option) either reperform the relevant Services or provide an appropriate refund of the price for such Services.

12.3 **Warranty Exclusions.** We shall not have any liability to you under the warranties in clauses 12.1 or 12.2 above to the extent that: the defect constitutes fair wear and tear, willful damage by or negligence of anyone other than us or our employees or representatives, or abnormal storage or working conditions; the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods/Spares or (in the absence of such instructions) good industry practice regarding the same; the defect results from the Goods/Spares having been in any way modified or altered by anyone other than one of our own employees or authorized representatives, unless under our supervision; the defect arises as a result of damage caused in the course of loading, unloading or transportation of the Goods/Spares except where such damage is caused by our acts or omissions or that of our representatives; the defect results from accidents or damage resulting from fire, water, wind, hail, lightning, electrical surge or failure, earthquake, theft or similar causes not caused or contributed to by the sole negligence of us or our employees or agents; the defect relates to or results from any specifications, parts, components or materials supplied by you or your representatives; or the defect results from or relates to your failure or refusal to follow our advice or recommendations with respect to the Services and/or to our compliance with your instructions with respect to the Services. Furthermore, our repair, replacement or reperformance obligations shall not include, and we shall have no liability for, any tasks or activities which are necessary or desirable as a result of things done to the Goods or subjects of the Services after we delivered them or completed our work, such as disconnecting them from or reconnecting them to any other plant, machinery, equipment or apparatus to which they may have been connected, integrated or installed by you or any third party not under our control. Furthermore, the warranties in clause 12.1 above do not apply to electric motors or diesel generators which we supply, whether as Goods or Spares. We do not provide any warranty in respect of such items. Such items of equipment may come with their manufacturer's warranty which we shall pass on to you if reasonably possible.

12.4 **No Performance Guarantee.** To the maximum extent permissible under law, you hereby acknowledge and agree that, because the performance of equipment on site will be influenced by many factors which are beyond our control, we do not warrant or guarantee that Goods/Spares will be capable of any particular standard of performance. Any information in our published sales, marketing and technical literature, or made orally or in writing, by our sales representatives which relate to the performance of any Goods/Spares are made in good faith and believed to be accurate in the context of the operating conditions within our own testing facilities but are only to be considered as indicative (i.e. non-binding) as regards the performance of any Goods/Spares in any other conditions.

12.5 **EXCEPT AS SPECIFICALLY SET FORTH HEREIN, WE EXPRESSLY DISCLAIM AND EXCLUDE ANY WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, OR OTHERWISE CREATED UNDER APPLICABLE LAW, INCLUDING (BUT NOT LIMITED TO) THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY ARISING FROM USAGE OF TRADE OR COURSE OF DEALING.**

13. LIMITATION OF LIABILITY

13.1 The remedies provided under the warranties above are your exclusive remedies for any failure of the Goods to conform to their description and/or any applicable Specification, for defects in the materials or workmanship of the Goods and for any inadequacies in the performance of the Services. You acknowledge and agree that this exclusive remedy shall not be deemed to have failed of its essential purpose so long as we are willing to repair or replace the defective Goods or reperform the defective Services. The warranties hereunder are extended to and shall be for the sole and exclusive benefit of you. This warranty is not assignable or otherwise transferable to any person or entity.

13.2 Nothing in these terms and conditions shall be construed as an attempt to exclude or limit our liability for death, personal injury, fraud or any other liability that cannot be limited or excluded by law.

13.3 **IN NO EVENT SHALL WE HAVE ANY LIABILITY FOR INDIRECT, SPECIAL OR CONSEQUENTIAL LOSSES, FOR ANY PUNITIVE DAMAGES OR ANY OF THE FOLLOWING LOSSES, REGARDLESS OF WHETHER SAME MAY BE CLASSIFIED AS DIRECT OR INDIRECT LOSSES: LOSS OF PROFIT; LOSS OF REVENUE, LOSS OF USE; LOSS OF GOODWILL OR REPUTATION; LOSS OF ANTICIPATED SAVINGS; LOSS OF PRODUCTION; OR RECALL EXPENSES.**

13.4 **WITHOUT PREJUDICE TO THE FOREGOING AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, OUR ENTIRE LIABILITY UNDER OR IN CONNECTION WITH THE CONTRACT (WHETHER UNDER CONTRACT, IN TORT, UNDER STATUTE OR OTHERWISE) SHALL BE LIMITED TO THE AGGREGATE PRICE PAID BY YOU IN RESPECT OF THE RELEVANT GOODS AND SERVICES AT ISSUE IN THE CLAIM.**

13.5 Nothing in the Contract shall be construed as releasing you from any duty you have at law to mitigate your losses.

14. INDEMNITY AGAINST THIRD PARTY CLAIMS

14.1 You agree to indemnify and hold us harmless against any third party claims made against under or in connection with the Contract (whether under contract, tort, statute or otherwise) to the extent that they would, if proved, cause our aggregate liability under or in connection with the Contract to exceed the limitation of liability established in clause 13.4 above.

15. DEFAULT

15.1 You will be in default if any of the following occurs: you are in breach of the Contract and, in the case of a breach capable of remedy, you fail to remedy same to our reasonable satisfaction within 7 (seven) days of being requested to do so; we have not received payment for any Goods or Services by the due date of payment; you suspend, threaten to suspend, cease or threaten to cease to carry on all or substantially the whole of your business; you become insolvent, or suspend, or threaten to suspend, payment of your debts, or are unable to pay your debts as they fall due or you admit your inability to pay your debts, or you are deemed by the law of any applicable jurisdiction to be unable to pay your debts; you are adjudicated bankrupt; you voluntarily file or permit the filing of a bankruptcy petition; you make an assignment for the benefit of your creditors; a person becomes entitled to appoint a receiver over you or your assets or a receiver is appointed over you or your assets; or any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the foregoing events mentioned.

15.2 If you default, or we reasonably believe that you are about to default and we notify you accordingly, without limiting any other rights or remedies available to us, we may: cancel or suspend all further deliveries under the Contract and/or under any other contract between us and you; treat the Contract as having been repudiated by you and terminate the Contract and/or such other contracts immediately upon giving you notice; exercise our right under clause 6.1 above to retake possession of any Goods which are in your possession but to which title has not passed to you; without notice to you, withdraw or vary any credit facilities we have provided to you; and/or without notice to you, make all monies owing by you to us under the Contract and/or any other contract we have with you immediately due and payable.

16. CONFIDENTIALITY

16.1 Each party agrees to keep confidential all commercial, technical, financial and other business information supplied to it (the receiving party) by the other party (the disclosing party) in connection with the Contract and only to use such information for the purposes of performing or enforcing the Contract and/or for another business transaction with the disclosing party. The receiving party shall only disclose such information to those of its officers, directors, employees, agents and supplier who need to know such information in connection with the purposes mentioned in the previous sentence. However, the receiving party shall not be in breach of its obligations under this clause 16.1 where it discloses or uses any information which: is already within the public domain at the time of disclosure or becomes so other than by a breach by the receiving party of its obligations in this clause; which the receiving party has permission from the disclosing party to disclose or use for an alternative purpose; that was already known to the receiving party prior to disclosure; or that it is required to disclose pursuant to a court order or binding legal order from a government or industry or regulator.

17. COMPLIANCE WITH LAWS

17.1 You shall conduct your business in strict compliance with all applicable federal, state, and local laws and regulations, including, but not limited to, any anti-corruption laws, such as the Foreign Corrupt Practices Act of the United States. You shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization in respect of the use, handling, transportation, storage, import, sale or disposal of the Goods, required under any applicable law or regulation relating to, among other things, the environment, control of chemical substances and restriction of hazardous substances. You shall not export or re-export, directly or indirectly, any Goods without obtaining the license or approval, if it is required under applicable international or national export control laws.

18. ENTIRE AGREEMENT

18.1 The Contract constitutes the whole agreement and understanding between us and you and supersedes any previous arrangement, understanding or agreement between us and you relating to the subject matter of the Contract. You acknowledge that, in entering the Contract, you have not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in the Contract. You agree that all liability for and remedies in respect of any representations are excluded except as expressly provided in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

19. FORCE MAJEURE (CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF THE PARTIES)

19.1 We shall not be liable for any failure or delay in performing our obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond our reasonable control and which, if foreseeable, could not have been avoided by the taking of reasonable precautions. Such events may include strikes, lock-outs or other industrial disputes (whether involving our own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, pandemics, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of our suppliers or subcontractors. To avail ourselves of our rights under this clause we must notify you within a reasonable time of first being affected by the Force Majeure Event.

20. NOTICES

20.1 Any notice which requires to be given to a party under or in connection with the Contract shall be in writing, addressed to that party at its address specified in the Order, its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, or commercial courier. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the appropriate address; if sent by pre-paid registered post or recorded delivery, at 9.00 am on the second Business Day after posting; or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

21. NO WAIVER

21.1 Either party's failure to exercise a right or remedy or a party's acceptance of a partial or delinquent payment shall not be deemed to be a waiver of any of the party's rights or the other party's obligations under this Contract, and shall not constitute a waiver of a party's right to declare a default. The terms of this Contract and obligations and acknowledgments under this Contract may only be waived or modified by us by an agreement in writing between the parties to this Contract.

22. NO ASSIGNMENT

22.1 You shall not assign your rights or delegate your duties under the Contract, in whole or in part, without our prior written consent, and any attempted or purported assignment or delegation without such consent shall be null and void.

23. SEVERABILITY

23.1 In the event of any part of the Contract becoming void or unenforceable, then that part shall be severed from the Contract and the remaining terms and conditions hereof shall remain in full force and effect.

24. APPLICABLE LAW AND DISPUTE RESOLUTION

24.1 The Contract shall be governed by and construed and enforced in accordance with the substantive laws of the state of New York, USA, without giving effect to any choice or conflict of laws rules, provisions or principles. Like us, you hereby submit to the exclusive jurisdiction of the U.S. District Court of Southern District of New York and waive any right to which they might be entitled to submit any dispute to the courts of another jurisdiction. Notwithstanding the foregoing, if you are not located in the United States and a dispute arises out of, in connection with, or in any way relating to the Contract, such dispute shall be resolved by final and binding arbitration. The arbitration shall be governed by the substantive laws of the US State of New York and by the Rules of Arbitration of the American Arbitration Association. The location of the arbitration shall be New York City, USA. The decisions of the arbitrators shall be final and binding, and a final judgment may be rendered on the final arbitral award in any court having personal jurisdiction over you or us, as applicable. The rights and obligations of the parties hereunder shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods.

24.2 EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR FORUM TO WHICH THEY MAY BOTH BE PARTIES, ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THE CONTRACT, THE BREACH THEREOF, OR WITH RESPECT TO ANY MATTER OR DISPUTE BETWEEN THEM.

25. RELATIONSHIP OF PARTIES

25.1 In your relationship with us, you are an independent contractor. Nothing in this Contract shall be construed such that you shall be considered an employee, agent or partner of us. This Contract shall not confer any rights or remedies upon any third party, other than the parties to this Contract and their respective successors and permitted assigns.

26. SURVIVAL

26.1 The clauses in these Conditions headed INTELLECTUAL PROPERTY, TITLE AND RISK OF LOSS, LIMITATION OF LIABILITY, INDEMNITY, and APPLICABLE LAW AND DISPUTE RESOLUTION and any other clauses of the Contract which, by their nature, should survive termination, shall survive the termination or expiration of the Contract.