



LANDSCAPING TERMS AND CONDITIONS OF SALE

REVISED AUGUST 2020



Brett Landscaping Limited referred to below as 'the Company', is only willing to supply products under these trading terms or under these trading terms with variations agreed by the Company in writing. These trading terms supersede any previously issued by the Company. The Customer's attention is drawn to Conditions 11(f) and 12.

Conditions of sale

1. Definitions:

- (a) 'Company' means the Company which issues the Order Acknowledgement namely, Brett Landscaping Limited, a company incorporated in England and Wales with company number 00342312 or Atlas Stone Products Limited, a company registered in England and Wales with company number 02972739, each of which has its registered office at Robert Brett House, Ashford Road, Canterbury, Kent, CT4 7PP.
- (b) 'Contract' means the agreement between the Company and the Customer for the supply of the Goods and/or Services incorporating, as applicable: these Conditions, the quotation, Order and Order Acknowledgement.
- (c) 'Customer' means the customer named in the Order (and where the customer is more than one person, each shall have joint and several responsibility).
- (d) 'Data Protection Legislation' means all applicable data protection and privacy legislation in force from time to time in the UK including (to the extent still in force) the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
- (e) 'Goods' means the goods to be supplied by the Company which are named or referred to in the Order Acknowledgement including any instalment of the Goods or any part of them.
- (f) 'Order' means an order for Goods and/or Services from the Customer.
- (g) 'Order Acknowledgement' means the written confirmation from the Customer in respect of its acceptance of the Order.
- (h) 'Services' mean the services to be provided by the Company to the Customer as set out in the Contract.

2. Creation of Contract

A quotation by the Company shall not constitute an offer and no Contract shall be taken as formed except by the Customer's Order being accepted in an Order Acknowledgement by the Company or by collection or delivery of the Goods or performance of the Services. Any aforesaid acceptance may be communicated in writing via the post, or electronically, by the Company.

3. Conditions of trading

- (a) The ordering of Goods and/or Services by the Customer or the accepting of delivery or the collection of the Goods by the Customer or acceptance of performance of the Services shall be deemed to be unconditional acceptance by the Customer of these Conditions and its acknowledgement that they supersede, override and oust:
 - (i) all previous negotiations, representations, warranties or agreements between the parties;
 - (ii) any other terms and conditions purported to apply by the Customer or which are implied by law, trade custom, practice or course of dealing.
- (b) No variation of or addition to these Conditions shall form part of any Contract unless specifically accepted by the Company in writing.
- (c) In the event of any inconsistency in the Contract, the documents shall prevail in the following order: the Order Acknowledgement, these Conditions, the quotation and the Order.

- (d) Any typographical, clerical or other error or omission in any sales literature, website, brochure, quotation, price list, Order Acknowledgement, invoice or other document or information issued by the Company is subject to correction without any liability on the part of the Company.
- (e) No addition or variation to an Order may be made by the Customer after the Company has issued its Order Acknowledgement. Any purported addition or variation shall be treated as a separate order at the time it is made and priced accordingly.

4. Customer's obligations

- (a) The Customer will be responsible to the Company for ensuring that the terms of any Order are accurate and complete, including any application specification submitted by the Customer, and for giving the Company any necessary information relating to the Goods and/or Services within a sufficient time to enable the Company to perform the Contract.
- (b) If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer will indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of any claim for actual or alleged infringement of any patent, copyright, design, trade mark or other industrial or intellectual property right of any other person which results from the Company's use of the Customer's specification. This clause 4(b) shall survive termination of the Contract.
- (c) The Customer shall:
 - (i) co-operate with the Company in all matters relating to the Goods and/or Services;
 - (ii) provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services and in the case of Goods access to the delivery location at the time required including free of charge reasonable assistance at unloading;
 - (iii) prepare the Customer's premises or delivery location for the supply of the Goods and/or Services (which shall ensure that the delivery of Goods can be made over suitable roads or other even ground);
 - (iv) obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and/or Services before the date on which the Services are to start or the Goods are to be delivered;
 - (v) comply with all applicable laws, including health and safety laws;
 - (vi) comply with all instructions, regulations, policies and directions of the Company applicable to the Customer or any of its employees, agents or representatives attending the Company's premises including the operation of any vehicles, plant, equipment or personnel upon such premises;
 - (vii) comply with and ensure that all persons handling the Goods or to whom they are supplied comply with all instructions, product information including warnings, handling, storage or use guidance contained in or referred to in any literature supplied with the Goods or displayed at the delivery location or available on the Company's website;

5. Prices

- (a) Unless otherwise agreed in writing with the Customer, the price of the Goods and/or Services will be the price quoted by the Company to the Customer at or immediately prior to the formation of the Contract. Such quotations are valid for a period of 30 days or until earlier acceptance by the Customer, before which time they may be altered by the Company upon giving notice to the Customer.

- (b) Unless otherwise expressly stated in writing by the Company, Orders are accepted on the basis that the price stated is the net price of the Goods and/or Services (after deduction of any discounts) for delivery in accordance with the Contract and sold subject to these Conditions. Where any amendment or variation to these Conditions is agreed in writing by the Company the price may be increased. The Company may at any time prior to performance of the Services or the Goods leaving the Company's premises increase the stated price to reflect all or part of any increased raw material, labour or transportation costs suffered by the Company since the price was stated together with any foreign exchange fluctuation, currency regulation or alteration of taxes or other duties. Such revised price shall be binding on the Customer. Where the Company's quotation or stated price does not refer to Value Added Tax it shall be deemed to be exclusive of any Value Added Tax which shall be payable in addition.
- (c) All orders must be for a full load, pack or pallet or for multiples thereof as shown in the Company's price list and orders for intermediate amounts will be treated and charged as though they were for the next multiple.

6. Cancellation

- (a) Regardless of any other provision in these Conditions, if at any time before performance of the Services or the delivery of the Goods to the Customer, the Company is not satisfied as to the Customer's creditworthiness, the Company may cancel the Contract by giving the Customer notice in writing to that effect or suspend delivery/performance and require payment in advance of supplying the same.
- (b) In the event that the Company accepts, prior to despatch, a request from the Customer to cancel any Goods which have been made to order or specially acquired by the Company, the Company reserves the right to charge the Customer the quoted full price of the Goods.
- (c) 48 hours notice is required from the Customer if it wishes to cancel any Order for non-bespoke Goods. Failure to comply with this may result in haulage and restocking charges.

7. Payment

- (a) Accounts are due and payable on the 30th day of the month following the month in which the Goods are delivered or collected or deemed to have been delivered or collected, or Services are performed unless otherwise agreed in writing by the Company.
- (b) The Customer will not be considered to have paid any amount tendered by cheque unless and until it has been credited to the Company's bank account.
- (c) If the Customer shall fail to make payment in full in accordance with sub-paragraph (a) of this Condition then (without prejudice to any other rights of the Company and in addition to the loss of any discount) the Customer shall, without any need for the Company to give notice, become liable to pay the Company interest on the amount for the time being unpaid. This interest shall be calculated at 8% per annum above the annual Base Rate of National Westminster Bank Plc calculated from the date of due payment until the date of actual payment. It shall be payable after, as well as before, any judgment. The Company reserves the right to recover the professional costs incurred in enforcing the debt against the Customer.
- (d) If the Customer shall fail to make payment in accordance with sub-paragraph 7(a) of this Condition then:
 - (i) the Company shall be entitled to suspend without incurring any liability in respect of all or any other deliveries to be made under that or any other contract with the Customer. In such event the Customer shall not in any respect be released from its obligations to the Company under that contract; or
 - (ii) the Company shall be entitled to terminate the relevant contract or any other contract with the Customer in accordance with Condition 15 below and to claim damages from the Customer.
- (e) The Customer shall not without the written consent of the Company be entitled to deduct or set off from any payment due pursuant hereto any claim for loss or expense alleged to have incurred by the Customer by reason of any breach or failure to observe the provisions of this or any other contract by the Company and the Customer expressly waives any common law right of set off to which he may be entitled.

- (f) In the event of any claim or dispute by the Customer regarding the Goods and/or Services, the Customer agrees it is only entitled to withhold payment on the disputed value only and not the whole invoice value or account balance.
- (g) Where carriage, packing or other charges are stated separately from the price they will nevertheless be payable by the Customer at the same time as if they formed part of the price and shall be treated as such. The Company shall be entitled to litigate or adjudicate for the price of the Goods and such other charges whether or not title in such goods shall have passed to the Customer in accordance with Condition 10 below.
- (h) Time for payment is of the essence.
- (i) Notwithstanding the foregoing the Company reserves the right to require payment of the price before performance of the Services or delivery of any of the Goods or at any time thereafter.
- (j) The Company shall be entitled but not obliged at any time or times without notice to the Customer to set off any liability of the Customer to the Company against any liability of the Company to the Customer (in either case howsoever arising and whether any such liability is present or future, actual or anticipated, liquidated or unliquidated and irrespective of the currency of its denomination) and may for such purposes convert or exchange any currency. Any exercise by the Company of its rights under this Condition shall be without prejudice to any other rights or remedies available to the Company under this Contract or otherwise.

8. Deliveries, collections and liability for delayed delivery or failure to supply

- (a) Whilst the Company will use all reasonable endeavours to keep any stated delivery or collection dates or times of the day the time for delivery shall not be of the essence and it accepts no liability whatsoever for any damage or loss (including any consequential loss) resulting from delayed delivery or availability for collection unless:
 - (i) delivery or collection date or programme has been agreed in writing; and
 - (ii) the Company has failed for at least 21 days after the agreed date to perform the Services, make a delivery or make the Goods available for collection; and
 - (iii) the Customer has then given the Company at least 7 days notice in writing of its intention to cancel collection or delivery of the Goods or performance of the Services or bring a claim and at the end of the period given the Goods have not been delivered or made available for collection.
- (b) Where the Goods are to be delivered in instalments each delivery will constitute a separate contract and (a) neither the failure of the Company to deliver any one or more of the instalments in accordance with these Conditions; nor (c) any claim by the Customer in respect of one or more instalments, entitle the Customer to treat the Contract as a whole as repudiated.
- (c) Where the Company is to deliver Goods that are unpackaged and loose: (a) the Company reserves the right to deliver any quantity between the maximum and the minimum capacity of the delivery vehicle; and (b) the price of the Goods will be adjusted accordingly.
- (d) On notification to the Customer that the Goods are ready for despatch (and where appropriate within the framework of a delivery or collection programme) the Customer shall accept immediate delivery or in the case of collection from the Company's premises shall arrange for collection of the Goods failing which the Company may:
 - (i) Either effect delivery by whatever means it thinks most appropriate or arrange storage at the Customer's risk and expense pending delivery; and
 - (ii) after 14 days notice to the Customer requiring it to take delivery at any time, re-sell or otherwise dispose of the Goods or part of them without prejudice to any other rights the Company may have against the Customer for breach of contract or otherwise.
- (e) If the Goods are not delivered or the Services are not performed on the expected date the Customer shall give written notice to the Company within 48 hours.
- (f) In cases where the Company concludes the contract of carriage and/or arranges for the insurance of the Goods in transit, the Company shall be deemed to be acting solely as agent of the Customer and sub-sections (2) and (3) of Section 32 of the Sale of Goods Act 1979 shall not be applicable.

9. Delivery and risk

- (a) Where the price quoted and accepted is for delivery at the premises of the Customer or a third party such delivery shall be made on hard roads to a hard and safe draw-in site suitable for unloading during normal working hours on normal working days and it shall be the responsibility of the Customer to ensure that delivery can be made in this manner.
- (b) If it has been agreed that the Company will deliver the Goods at the premises of the Customer or a third party the Customer shall provide good firm level and cleared ground on which to stack the Goods. It shall be the responsibility of the Customer to ensure that the Goods are properly and safely stacked, stored and protected.
- (c) Offloading of the Goods shall take place as agreed between the parties in the Order Acknowledgement. In the event that the Company is responsible for offloading the Goods, risk shall pass once the Goods have been offloaded from the Company's vehicle. In the event that the Customer is responsible for offloading the Goods, it shall do so at its risk and expense and the risk shall pass once the delivery vehicle has arrived at the premises of the Customer or third party as applicable. In either case access to the point of offload must be made available and offloading must take place within 30 minutes of arrival of the Company's delivery vehicle, failing which the Customer shall pay the Company's waiting charge of £100.00 (or such other charge as set by the Company from time to time) per hour or part thereof.
- (d) Where the price quoted and accepted is for collection of the Goods from the Company's premises it shall be the Customer's responsibility to arrange collection of the Goods in suitable and safe vehicles during normal working hours on normal working days and only after prior agreement with the Company. Risk shall pass when the Goods are loaded on to the collection vehicle provided by the Customer or its agent and entry of the Customer's vehicles onto the Company's premises shall be at the Customer's risk (save for any claim arising from the Company's negligence which has resulted in personal injury or death).
- (e) The Customer shall keep the Goods fully insured against all risks from the time of delivery.
- (f) The Customer shall fully indemnify the Company in respect of any claims, liabilities, damages, costs and expenses made against or incurred by the Company by reason of damage caused to person or property and arising out of a failure by the Customer to comply with the provisions of this Condition.

10. Title to Goods

- (a) Notwithstanding delivery or collection of the Goods or of any documents relating to them the Company will remain the sole and absolute owner of each item of Goods. Title shall not pass until payment has been made in full in cleared funds of:
 - (i) the price for the Goods; and
 - (ii) any other sums payable in respect of the Goods including interest payable hereunder; and
 - (iii) any other sums payable (whether due or not) for other Goods previously or subsequently sold by the Company to the Customer and any other sums payable in respect of those other Goods including interest.
- (b) For the purpose of these Conditions, all Goods of the same description purchased by the Customer from the Company and subsequently used or sold by the Customer shall be deemed to have been used or sold on a 'first in first out' basis so that the Goods remaining unused or unsold are deemed to be those most recently purchased. The Customer shall unless otherwise agreed by the Company in writing ensure that all Goods which are in the possession or control of the Customer and the property in which remains with the Company are held as the Company's fiduciary agent and bailee and are stored separately and labelled so that they may be readily identified as the Company's property.
- (c) The Customer may sell any item of the goods in the ordinary course of its business prior to the Company receiving payment in full of such item and in such event the Customer shall hold on trust for the Company and shall account to the Company for the proceeds of sale of such item.

- (d) The Company shall be entitled by its employees or agents to enter upon or into any land, buildings or vehicles where the Goods or part of them are situated to retake possession of them. Upon request the Customer shall notify the company of the location of any goods which are the Company's property.
- (e) The Customer will not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all money owing by the Customer to the Company will, without limiting any other right or remedy of the Company, immediately become due and payable to the Company.

11. Claims for defective goods

- (a) Whether the Goods have been delivered by the Company or have been collected by the Customer, the Customer shall immediately after off-loading is completed examine the Goods to check that the correct quantity has been delivered and as far as is apparent that they have no apparent defects. If the Goods have been delivered by the Company and the Customer was present when off-loading was completed and is satisfied with the Goods following their examination the Customer will on request by the delivery driver sign a receipt slip. If the Customer is not satisfied with the Goods following their examination the Customer shall:
 - (i) if the defect is of fundamental importance immediately notify the Company that it refuses to accept the Goods and indicate the nature of its dissatisfaction; such notification must in every case be within 24 hrs of delivery or collection and confirmed in writing to the Company within 2 days thereof;
 - (ii) in all other cases indicate on any receipt slip used the nature of its dissatisfaction and obtain the countersignature of the driver on the same slip and confirm or indicate the same in writing to the Company within 2 days of delivery or collection; and
 - (iii) always give the Company an opportunity to inspect the Goods concerned in the condition and location in which they were off-loaded.
- (b) The Company requires all claims to be made by the Customer to the Company in writing, within the following timescales:
 - (i) claims in respect of short delivery or in respect of defects which are apparent on examination must be made in any event within 24 hours of delivery;
 - (ii) claims in respect of defects which are not apparent on examination must be made in any event within 10 days of receipt;
 - (iii) time for making all such claims is of the essence of the Contract and the Company's liability shall be limited as set out in Condition 12.
- (c) The Customer shall not be entitled to reject the Goods or any part thereof by reason only of short delivery.
- (d) Should the Customer refuse delivery or collection of the Goods on the grounds of damage the Company will make a restocking charge of 20% of the value of the Goods returned, if those Goods are found not to be damaged when inspected at the Customer's premises or received back at the Company's premises. In addition to the foregoing, all expenses for collection of the Goods from the Customer's premises shall be for the Customer's account and any charges made to the Company in connection with the return will be recharged to the Customer's account before any reimbursement is made in respect of the Goods returned.
- (e) If the Customer wishes to return any Goods supplied under this or any other contract he shall in the first instance obtain the Company's permission in writing. Any arrangements for the return of Goods once agreed with the Company shall be the responsibility of the Customer and all expenses for collection of the Goods from the Customer's premises shall be charged to the Customer's account. Any reimbursement due to the Customer will be subject to the condition of the Goods on receipt back at the Company's premises and calculated on the basis of the price originally charged for them. A restocking charge may also be made of 20% of the value of the Goods returned plus any applicable shipping or transportation costs.
- (f) Without prejudice to Condition 12, under no circumstances shall the Company be liable to the Customer for any claim arising out of:

- (i) any description, samples, specification or other particulars relating to the Goods or their suitability for any particular purpose or for use under specific conditions unless they form part of this Contract. If the Customer intends that any such particulars contained in the Company's sales literature, website, brochure, price list or other document or information issued by the Company valid at the date the Goods are ordered, form part of this Contract, it must so notify the Company in writing. Such notification must be made prior to the Goods being ordered and shall only apply to Goods ordered after the Company has confirmed in writing to the Customer that the particulars are accepted;
- (ii) technical information, recommendations, statements or advice given by or on behalf of the Company relating to the methods of fixing or installing the Goods.
- (f) Subject to Condition 12(j), no circumstances whatsoever shall the Company have any liability to a Customer in respect of any of the matters referred to in Conditions 11 or 12, greater than the price of the Goods and/or Services.
- (g) Subject to Condition 12(j), the Company shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, or any advice or assistance given relating to the Services or the Goods, or their handling, installation, use or disposal, for any loss, damage, costs, expenses or other claims for compensation whatsoever (and whether caused by negligence of the Company, its employees or agents or otherwise) which shall arise out of or in connection with the supply of the Services or the Goods or their use or resale by the Customer, except as expressly provided in these Conditions. The Customer accepts and agrees that it will have no claim against the Company for any of the following losses:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) indirect or consequential loss.

12. Warranty and indemnity and limits on claims

- (a) Subject to the Conditions set out below the Company warrants that the Services will be performed with reasonable care and skill and the Goods will correspond at the time of delivery:
 - (i) with the description, specification and particulars of the Goods detailed in the Contract; and
 - (ii) with any additional description specification to particulars forming part of the Contract after notification pursuant to Condition 11(f).
- (b) The above warranty is given by the Company subject to it being under no liability:
 - (i) in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;
 - (ii) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval or continued use of the Goods after giving notice in accordance with Condition 11, or the specification of the Goods differ as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
 - (iii) under the above warranty or any other warranty, condition or guarantee if the total price for the Goods and/or Services has not been paid by the due date for payment;
 - (iv) for any Goods not manufactured by the Company, in respect of which the Customer will only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company;
 - (v) in the event that the Goods suffer from colour, shade, grading, texture or other minor variances, irregularities or nominal size differences which habitually occur in products manufactured by the process used by the Company.
- (c) Save as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by the law. The Statutory Rights of Consumers are not affected by these Conditions.
- (d) Any claim by the Customer which is based on matters referred to in Condition 11(a) shall be notified in the manner and within the time limits set out in these Conditions; and
 - (i) if the Customer did not refuse to accept the Goods and did not duly notify the Company of a claim in accordance with these Conditions the Customer shall not be entitled to reject the Goods; and
 - (ii) the Company shall have no liability; and
 - (iii) the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- (e) In the event that a valid claim is notified to the Company in accordance with these Conditions, the Company shall deliver or make available for collection as appropriate, replacement Goods free of charge or at the Company's sole discretion refund to the Customer the price (or a proportionate part of the price) of the Goods.
- (h) To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer will indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of such specification. This clause shall survive termination of the Contract.
- (i) The Customer shall indemnify the Company in respect of any claims, proceedings, liabilities, damages, costs and expenses of whatsoever nature made against or incurred by the Company and arising out of failure by the Customer to observe any statutory or regulatory provisions applicable to the Goods and/or Services and the Company's instructions (whether oral or in writing) relating in any way whatsoever to the Goods and/or Services.
- (j) Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
 - (i) death or personal injury caused by negligence;
 - (ii) fraud or fraudulent misrepresentation;
 - (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - (iv) defective products under the Consumer Protection Act 1987.

13. Compliance with law and instructions

The Customer shall comply with all statutory and regulatory requirements applicable to the Goods and/or Services and shall observe all instructions including health and safety instructions issued from time to time by the Company (copies of which are available on request) and shall be solely responsible for and shall keep the Company indemnified against any claims, liability, damage, costs and expenses arising directly or indirectly from use of the Goods other than in accordance with such health and safety instructions or legal/regulatory requirements.

14. Force majeure

The Company shall not be liable for any loss or damage caused by non-performance or delay in the performance of any of its obligations to the Customer due to any events, circumstances or causes beyond its reasonable control including without limitation an act of God, war, civil disturbance, government action, strike, lock out or trade dispute (whether involving its own employees or any other person), difficulties in obtaining materials, breakdown in machinery, transportation or utility failure, fire, epidemic, pandemic or accident or any other causes whatsoever beyond the control of the Company. Should any such event occur the Company reserves the right to cancel an Order or suspend the Contract with the Customer without incurring any liability for any loss or damage thereby occasioned. The non-affected party may give notice to the affected party terminating the Contract if such force majeure exists for a period in excess of 3 months.

15. Termination

- (a) The Company may by notice in writing to the Customer terminate any Contract immediately if the Customer:
- (i) commits any breach of any of the terms (including without limitation terms concerning the time for payment of the purchase price) of this or any other contract with the Company and on its part to be observed and performed;
 - (ii) has a receiving order against him or commits an act of bankruptcy or enters into a voluntary arrangement; or
 - (iii) being a Company, calls any meeting of its creditors or takes any step to have a receiver or administrator appointed, or enters into any liquidation; or
 - (iv) ceases or threatens to cease to carry on business; or
 - (v) its financial position deteriorates to such an extent that the Company is of the opinion that it cannot fulfil its obligations under the Contract.
- (b) In the event of any such termination the Company shall in addition to exercising its rights to repossession of the Goods under Condition 10 of these Conditions be entitled by notice in writing to the Customer to declare (and there shall forthwith become) immediately due and payable any amounts outstanding from the Customer to the Company under this or any other contract between them.
- (c) The provisions of (a) and (b) above and the exercise by the Company of its rights thereunder are without prejudice to any other rights of the Company and termination shall not affect such rights that have accrued up to termination.
- (d) If the Customer gives notice cancelling Services prior to performance, the Company reserves the right to charge the Customer for any labour booked and/or materials ordered which cannot be cancelled or otherwise deployed by the Company, acting reasonably.

16. Variations in finish/product development

- (a) Whilst every effort is made to maintain continuity and consistency of the Goods, the manufacturing processes do not make it possible to guarantee a colour match from batch to batch. Any natural components in the Goods, will have inherent variations
- (b) As part of the Company's commitment to continuous product development, it reserves the right to change product specification, design and/or colour range, without prior notice including as necessary to comply with any applicable statutory, regulatory or other standard relevant to the Goods and/or Services.

17. General

- (a) The Company may assign or sub-contract all or any of its rights and obligations under the Contract. The Customer may not assign or sub-contract any of its rights or obligations under the Contract without the Company's prior written consent.
- (b) If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question will not be affected.
- (c) The Company and the Customer do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

- (d) No waiver by the Company of any breach of the Contract by the Customer will be considered as a waiver of any subsequent breach of the same or any other provision.
- (e) Any dispute or difference of any kind whatsoever which arises or occurs between the parties in relation to the Contract which cannot be amicably resolved shall be referred to arbitration under the Arbitration Rules of the Chartered Institute of Arbitrators.
- (f) Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- (g) Entire agreement:
- (i) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (ii) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of 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 misrepresentation based on any statement in the Contract.
 - (iii) Nothing in this clause shall limit or exclude any liability for fraud.
- (h) Notices:
- (i) Any notice given to a party under or in connection with the Contract shall be in writing and shall be 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) Any notice shall be deemed to have been received:
 - (1) if delivered by hand, or at the time the notice is left at the proper address; and
 - (2) 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 at the time recorded by the delivery service.
- (i) Both parties will comply with all applicable requirements of the Data Protection Legislation and acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Company is the processor and the Customer will ensure that it has all appropriate consents and notices in place to enable lawful transfer of the personal data to the Company (if applicable).
- (j) The construction validity and performance of all contracts shall be governed by the laws of England and any claim or dispute arising therefrom shall be subject to the non-exclusive jurisdiction of the English Courts.

Last updated: August 2020