

Alsecco (U.K.) Limited

Terms and Conditions for the Sale of Goods

The Customer's attention is drawn in particular to the provisions of clause 8.

1. Interpretation

1.1 Definitions:

Alsecco: Alsecco (U.K.) Limited, a company registered in England and Wales with Co. No. 03002864 whose registered office address is at The Logic Centre, Whitebridge Way, Stone, England, ST15 8JS.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Conditions: the terms and conditions in this document, amended from time to time in accordance with clause 14.4.

Contract: the contract between Alsecco and the Customer for the sale and purchase of Goods in accordance with these Conditions, as more particularly described in clause 2.3.

Customer: the company, firm or other person which purchases Goods from Alsecco, whose details are stated in the Order Acknowledgement.

Delivery Address: the location for delivery of the Goods (or collection if so specified) stated in the Order Acknowledgement. If no Delivery Address is so stated, the Delivery Address shall be Alsecco's premises.

Force Majeure Event: shall have the meaning in clause 10.1.

Goods: the goods (or any part of them) described in the Order Acknowledgement and in the Specification, to be purchased by the Customer.

Installation and Maintenance Document: the Alsecco document issued from time to time (whether via email or other means) in connection with the installation, care and maintenance of the Goods referred to as the Installation and Maintenance Requirements or such updated or replacement document or documents as Alsecco may issue from time to time.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade 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, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

Order Acknowledgement: the written Order Acknowledgement (referred to as such on its face) which is issued by Alsecco to the Customer. The Order Acknowledgement will contain various details as more particularly described therein.

Price: the price for the Goods together with any delivery and other charges, stated or referred to in the Order Acknowledgement or, if no price is so stated, the price in Alsecco's standard published price list in force at the delivery date.

Specification: the specification for the Goods provided by Alsecco or otherwise agreed in writing by Alsecco including as may be referred to in the Order Acknowledgement.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a party includes its successors and permitted assigns.
- 1.4 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.
- 1.5 Any words following the terms including, include, in particular, for example or similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Basis of Contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms or conditions that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 Any order from the Customer constitutes an offer only by the Customer to enter into the Contract for the purchase of Goods in accordance with these Conditions. The Customer is responsible for ensuring that any order which it may raise and any other information provided to Alsecco is complete and accurate. Nothing shall oblige Alsecco to accept any order from the Customer. No order from the Customer nor any terms and conditions of the Customer referred to therein, shall form part of the Contract (except as otherwise expressly confirmed in writing by Alsecco in the Order Acknowledgement).
- 2.3 The Contract for the supply of the Goods is comprised of these Conditions, the Order Acknowledgement and the relevant Specification and any documents referred to therein. In the event of any conflict between the documents which together comprise the Contract, the documents shall prevail in the following order (with the first document listed below taking precedence and so on thereafter):
 - (a) Order Acknowledgement;
 - (b) Specification;

(c) the Conditions.

- 2.4 The Contract shall come into force when Alsecco issues the written Order Acknowledgement at which point and on which date, the Contract shall come into existence. The Customer waives any right it might otherwise have to rely on any term endorsed on, delivered with or contained in, any Customer documents that is inconsistent with these Conditions. For the avoidance of doubt, any automated email which Alsecco may send following receipt of an order is for information to confirm safe receipt only but shall not signify nor be deemed to constitute acceptance by Alsecco of any order and the Contract shall only be formed when the Order Acknowledgement is issued to the Customer in accordance with the foregoing.
- 2.5 Any promotional catalogues, brochures or advertising produced by Alsecco and any descriptions or illustrations in Alsecco catalogues, brochures or similar (in any format) 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.
- 2.6 Any quotation for the Goods given by Alsecco shall not constitute an offer and shall only be valid for 30 (thirty) days from date of issue or for such other period stated therein and relates only to the specific type and quantity of goods set out in the quotation. Any materials supplied with a quotation shall be returned to Alsecco by the Customer.
- 2.7 The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Alsecco which is not set out in the Contract.

3. Supply of Goods and Customer Obligations

- 3.1 In consideration of the payment of the Price, Alsecco shall supply the Goods.
- 3.2 The Goods are described in the Order Acknowledgement and the Specification. The Customer is responsible for ensuring that the Goods and the relevant Specification meet its requirements. Alsecco reserves the right to amend the Specification at any time if required by any applicable statutory, regulatory or other legal or compliance requirement.
- 3.3 Where Goods are provided on a bespoke basis, the Customer shall ensure that all measurements, dimensions and other information which it provides to Alsecco is accurate and complete in all respects. Alsecco shall have no liability for Goods supplied in accordance with any measurements, dimensions and other information provided by the Customer which are incorrect or incomplete.
- 3.4 The Customer must upon receipt, check all Specification information, the quotation and any other information provided by Alsecco in response to a request to supply Goods and notify Alsecco of any issues by return. Alsecco shall not be obliged to make any changes to the supply (or preparation for supply) of Goods once an Order

Acknowledgement has been issued and the Customer's attention is drawn in particular to clause 2.4.

- 3.5 The Customer must not under any circumstances remove any labels, instructions, packaging, safety information, literature, warranty information, markings or other detail supplied with the Goods including in the event of an onward sale of the Goods. The Customer shall remain responsible for all matters in connection with the storage, use, treatment and onward sale of Goods.
- 3.6 The Customer shall indemnify and keep indemnified Alsecco against any and all liabilities, costs, expenses, damages and losses including any direct, indirect and/or consequential losses and all interest and legal costs in respect of any third party claim or allegation of a claim of whatever nature (including a claim for negligence) against Alsecco which arises or is caused directly or indirectly as a result of any fault, act or omission of the Customer, its customer or any person appointed by, connected to, representing or acting for or on behalf of the Customer and/or its customer, including without limitation, any failure by the Customer, its customer and/or any other person to comply with any of its obligations in this clause 3 (or in the case of a third party, terms equivalent to those in this clause 3) or the incorrect treatment, use or storage of the Goods.

4. Delivery

- 4.1 Alsecco shall deliver the Goods to the Delivery Address. In the event that Alsecco agrees in writing that the Goods may be collected by the Customer, the Delivery Address shall be Alsecco's premises (or as otherwise stated on the Order Acknowledgement).
- 4.2 If the Customer is not present at the Delivery Address at the time of delivery, the Customer shall make available an appropriate representative to handle the same, nothing shall preclude the application of the Customer's obligations as set out herein and the Customer shall ensure that any person handling delivery on its behalf, complies with obligations equivalent to those in this clause 4.
- 4.3 Delivery of the Goods shall be completed on the Goods arrival at the Delivery Address or in the case of collection, on collection for or on behalf of the Customer or if the Customer fails to collect within seven days of the date on which the Goods were stated as ready for collection.
- 4.4 Alsecco shall ensure that each delivery is accompanied by a delivery note that shows order number, type and quantity of Goods and, if the Goods are to be delivered by instalments, the outstanding balance of Goods to be delivered.
- 4.5 The Customer shall ensure that safe access to and egress from the Delivery Address is available for persons and vehicles delivering the Goods and Alsecco reserves the right to deliver Goods to the nearest point of suitable access.

- 4.6 Except as otherwise agreed in writing, the Customer shall be responsible for the unloading of the Goods from delivery vehicles and shall make available, sufficient and appropriately trained personnel and equipment for the safe, secure and regulatory compliant unloading of the Goods. In the event that Alsecco agrees to unload the Goods from the vehicle, additional charges shall apply.
- 4.7 If Alsecco requires the Customer to return any packaging, Alsecco shall state that fact on the delivery note and returns of packaging shall be at the Customer's expense.
- 4.8 Any dates quoted for delivery are approximate only, and time of delivery is not of the essence and Alsecco shall have no liability for late delivery of the Goods. Delivery shall take place on weekdays during the hours of 8am to 5pm except as otherwise agreed in writing. Any delivery which is arranged outside of the aforementioned hours shall be subject to additional charges.
- 4.9 Without prejudice to the generality of clause 4.8, Alsecco shall not be liable for any delay in delivery or failure to deliver the Goods due to a Force Majeure Event or the Customer's failure to provide Alsecco with adequate delivery or other instructions that are relevant to the supply of the Goods.
- 4.10 If Alsecco fails to deliver the Goods, the Customer must notify Alsecco of the non-delivery within 3 (three) days of the date on which the Goods were estimated to be delivered and Alsecco's liability for non-delivery shall be limited (at Alsecco's option) to:
- (a) replacing Goods which are the subject of the non-delivery within a reasonable time; or
 - (b) issuing a credit note or refund for such Goods which have not been delivered.

If the Customer fails to notify Alsecco in accordance with this clause 4.10, Alsecco shall not be liable for any failure in delivery or any costs associated with such failure.

- 4.11 If the Customer fails to take delivery on the date on which the Goods are tendered for delivery at the Delivery Address then, except where such failure is caused by a Force Majeure Event affecting Alsecco or Alsecco's material failure to comply with its Contract obligations in respect of the Goods:
- (a) delivery shall be deemed completed at the time at which the Goods were tendered for delivery at the Delivery Address and risk shall pass accordingly; and
 - (b) Alsecco shall store the Goods until delivery takes place and (without prejudice to Alsecco's other rights and remedies) charge the Customer for all related costs and expenses (including insurance costs, costs, expenses and liabilities of any relevant third party supplier of Alsecco (including transportation) and all other costs for storage of the Goods) but subject to Alsecco's right to sell or otherwise dispose of the Goods, in the event that the Customer fails to take delivery by the date which is three months from the date on which the Goods

were first tendered for delivery or the Price should have been paid in full, whichever is soonest. In the event of disposal or sale by Alsecco in accordance with this clause 4.11, Alsecco may charge the Customer for any shortfall below the Price of the Goods or (and only where the Customer has paid for the Goods in advance in full and after deducting reasonable storage, selling costs and other amounts referred to above) Alsecco shall account to the Customer for any excess over the Price of the Goods. The foregoing provisions shall apply irrespective of whether or not the title in the Goods has passed to the Customer and the Customer shall be obliged to pay for the Goods so stored in accordance with the provisions hereof.

- 4.12 The Customer shall not be entitled to reject the Goods if Alsecco delivers less than the quantity of Goods stated in the Order Acknowledgement but a Price pro-rata adjustment shall be made within a reasonable period provided that the Customer notifies Alsecco of the shortfall by written notice, such notice to be delivered in good faith. Alsecco reserves the right to request evidence of any shortfall in the Goods so delivered including photographs. In the event that Alsecco delivers in excess of the amount of the Goods ordered, the Customer may only reject the excess volume of Goods so delivered, above the volume of Goods as stated in the Order Acknowledgement. Any incorrect volume of Goods delivered should be noted on the delivery note by the Customer.
- 4.13 Alsecco may deliver the Goods by instalments, which shall be invoiced and paid for separately except where otherwise agreed in writing. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment. Where the Customer places more than one Contract with Alsecco, Alsecco may deliver Goods in such order as it shall determine.
- 4.14 The Customer shall provide to Alsecco, such information as Alsecco may reasonably require for the performance of its obligations including as to delivery and unloading of the Goods which may include completion of a delivery point information form where requested by Alsecco.
- 4.15 Delivery shall be in such containers as are held in stock at the time the relevant order is processed.
- 4.16 Without prejudice to any other rights and remedies of Alsecco as set out herein, the Customer shall notify Alsecco on not less than seven days written notice in the event that it will not be able to take delivery of the Goods on the anticipated date for delivery in which case Alsecco may store the Goods in accordance with clause 4.11(b).

5. Quality and Defects

- 5.1 Alsecco may provide a warranty in respect of particular product types and the same shall be as set out in a separate warranty document as may accompany the Goods. Any such warranty shall be in place of but not additional to the provisions of this clause

5. Where no such product specific warranty is provided in respect of relevant Goods, the provisions of this clause 5 and the warranty and remedy contained herein shall be the only liability of Alsecco in relation to any defect in the Goods.

5.2 Subject to clause 5.1, clause 5.3 and clause 8 and provided that:

- (a) the Customer gives written notice to Alsecco:
 - (i) of any damage to or defect in, the Goods, within 3 (three) days of delivery, in the case of a defect which is apparent on normal visual inspection (such damage also to have been noted on the delivery note with full detail including photographs and other evidence to be provided within the timeline referred to above);
 - (ii) of a latent defect, within 10 (ten) days of the latent defect having become apparent but in any event, by no later than the date which is ten years after the date on which practical completion of the Goods being originally installed occurred; and
- (b) Alsecco is given a reasonable opportunity of examining such Goods wherever located and whether or not used or installed and the Customer at all times following reasonable instructions in connection with such inspection; and
- (c) where reasonably possible and if required by Alsecco, the Customer returns such Goods to Alsecco's premises;

then if Alsecco, acting reasonably, determines following such inspection that the Goods are defective Alsecco shall, at its option:

- (d) replace or repair the defective Goods; and
- (e) pay the reasonable costs incurred by the Customer in respect of labour, the provision of access and other reasonable installation costs only in respect of any replacement Goods supplied in accordance with this clause and subject always to the limitations in clause 8;

and once Alsecco has complied with the foregoing, it shall have no further liability to the Customer for any defect in or damage to, the Goods.

5.3 Alsecco shall not be liable for a failure in respect of any defect in the Goods (which for the purpose of this clause 5 shall also mean to include any damage) nor have any other liability if any of the following applies:

- (a) the Customer (or any other person) makes any use of such Goods after notifying in accordance with clause 5.2;
- (b) the Customer (or any other person) makes any use of the Goods in connection with any project not expressly notified to and agreed by Alsecco, in writing and in advance;
- (c) the defect arises because the Customer (or any other person) failed to follow Alsecco's (or manufacturers' or other suppliers') instructions as to the storage, installation, care, record keeping in relation to, inspection or use of, the Goods

as may be specified in any document from time to time (including without limitation as set out in the Installation and Maintenance Document), or good trade practice for the same;

- (d) the Customer (or any other person) alters or repairs such Goods without the written consent of Alsecco;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, misuse, negligence, or abnormal storage or working conditions;
 - (f) the defect arises as a result of a Force Majeure Event;
 - (g) the Goods differ from their Specification or are otherwise modified as a result of changes made to ensure they comply with applicable statutory, regulatory or other compliance or legal requirements;
 - (h) the defect arises as a result of Alsecco following Customer specification, information or instruction;
 - (i) the defect arises as a result of incorrect installation by the Customer or any other person;
 - (j) connection or application of the Goods to any structural system not supplied by Alsecco, or the substrate.
- 5.4 Clauses 5.1 to 5.3 shall not apply to and Alsecco shall have no liability in respect of any third party components used in the Goods or other items not manufactured by Alsecco and Alsecco's liability shall be limited in relation to any such third party components, to passing to the Customer such warranty or balance thereof for those parts only in so far as the manufacturer of such parts expressly permits it to do so and only in so far as is legally possible.
- 5.5 The period for notification as set out in clause 5.2(a)(ii) in respect of latent defects shall apply only to Goods sold under the Alsecco brand but shall not apply to any Goods sold under the Caparol brand and in the event of any defect in any Goods sold under the Caparol brand, the remedies referred to in this clause 5 shall only be available to a Customer in respect of Caparol branded Goods where such damage or defect is notified in accordance with clause 5.2(a)(i).
- 5.6 Except as provided in this clause 5, Alsecco shall have no liability to the Customer in respect of any defect in the Goods. All warranties, terms and conditions whether express or implied by statute, common law or otherwise, including those implied by s.13 to 15 of the Sale of Goods Act 1979 are to the fullest extent permitted by law, excluded from the Contract. The Customer's attention is drawn to the provisions of clause 5.9.
- 5.7 These Conditions shall apply to any replacement Goods supplied by Alsecco.
- 5.8 The Customer acknowledges that due to the nature of the Goods, there may be variances between samples and Goods, and between batches of Goods, due to variances in colour, texture or shade given the nature of the Goods and materials used.

Batches cannot be guaranteed to match and variances shall not be in any way treated as a breach of any warranty or other term of this Contract nor in any way, constitute a default by Alsecco.

5.9 The Customer shall at all times remain fully responsible for determining the suitability of the Goods for any intended use, application or purpose.

6. Title and risk

6.1 Risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Notwithstanding that risk in the Goods has passed, title to the Goods shall not pass to the Customer until the earlier of:

- (a) Alsecco receives payment in full (in cleared funds) for the Goods and any other goods that Alsecco has supplied to the Customer in respect of which payment has become due (whether under this Contract or any other contract), in which case title to the Goods shall pass at the time of payment of all such sums in full and cleared funds; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Alsecco's property;
- (b) hold them as Alsecco's bailee;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) not create or allow to be created any interest or encumbrance or pledge any credit in relation to the Goods (and if any such interest or encumbrance or pledge is created, the Price shall be immediately payable in full);
- (e) maintain the Goods in satisfactory condition and keep them insured with a reputable insurer, against all risks for their full price from the delivery date and provide a copy of the insurance certificate to Alsecco on request and hold any proceeds of any insurance claims in relation to any Goods belonging to Alsecco on account for Alsecco, in a separate bank account;
- (f) notify Alsecco immediately if it becomes subject to any of the events listed in clause 9.3 ; and
- (g) give Alsecco such information as it may reasonably require from time to time relating to the Goods and the ongoing financial position of the Customer.

6.4 Subject to clause 6.5, the Customer may resell or incorporate or use the Goods in the ordinary course of its business (but not otherwise) before Alsecco receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as Alsecco's agent; and
 - (b) title to the Goods shall pass from Alsecco to the Customer immediately before the time at which resale by the Customer occurs;
 - (c) it shall do so at the best available price, Alsecco shall remain legally and beneficially entitled to the sale proceeds and the Customer shall maintain the same in a separate bank account and account to Alsecco for such sale proceeds.
- 6.5 If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 9.3, without limiting any other right or remedy of the Customer, the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately.
- 6.6 Without prejudice to clause 6.5, at any time before title to the Goods passes to the Customer, Alsecco may:
- (a) by written notice, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
 - (b) require the Customer to deliver up all Goods (and any other goods belonging to Alsecco) in its possession that have not been used or resold and if the Customer fails to do so promptly, itself or by appointing any person on its behalf to enter any premises of the Customer or of any third party where the Goods are stored with our without vehicles, in order to recover them and for such purposes, the Customer shall be obliged to grant and obtain all rights of entry to relevant premises and the Customer shall meet Alsecco's costs in exercising its rights under this clause 6.6.

7. Price and payment

- 7.1 The Customer shall pay the Price of the Goods to Alsecco together with any other sums as specified in the Order Acknowledgement including for delivery, together with all sums in respect of VAT. The Customer shall be responsible for all taxes, levies, duties and other charges.
- 7.2 Alsecco may, by giving notice to the Customer at any time before delivery, increase the Price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond Alsecco's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give Alsecco adequate or accurate information or instructions.
- 7.3 The Price of the Goods:

- (a) excludes amounts in respect of VAT or any other similar or equivalent tax and any other duties and charges, which the Customer shall be liable to pay to Alsecco at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of insurance, delivery and transport of the Goods, which shall be invoiced to the Customer.

All delivery charges are based on a full vehicle load and if otherwise, additional delivery charges will apply. Alsecco shall determine the most appropriate form of transportation for the delivery of the Goods.

- 7.4 Alsecco may invoice the Customer in advance of dispatch of the Goods or as otherwise stated on the Order Acknowledgement.
- 7.5 Except as otherwise may be stated by Alsecco on the Order Acknowledgement, the Customer shall pay each invoice submitted by Alsecco, by electronic payment, in full and cleared funds to a bank account nominated in writing by Alsecco as follows:
 - (a) within 30 (thirty) days from the end of the month in which the invoice is raised only in cases where trade credit has been granted by Alsecco to the Customer as more particularly described in clause 7.9;
 - (b) in all other cases, by no later than the date of dispatch of the Goods as notified by Alsecco to the Customer;

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

- 7.6 If the Customer fails to make payment due to Alsecco by the due date, then without limiting Alsecco's other rights and remedies, including as set out in clause 9, Alsecco reserves the right to charge and the Customer shall pay interest on, the overdue sum from the due date until payment whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% (four percent) a year above National Westminster Bank base rate from time to time, but at 4% (four percent) a year for any period when that base rate is below 0% (zero percent).
- 7.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Alsecco may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Alsecco to the Customer.
- 7.8 All payments shall be made to Alsecco in Pounds Sterling and all invoices shall be raised in Pounds Sterling. The Customer shall be responsible for any fluctuations in currency rates including any which apply to any third party costs payable by the Customer under the Contract.

- 7.9 Alsecco may choose to grant trade credit to a Customer as it may from time to time determine and on such terms and in accordance with such credit application process and procedure as it may determine from time to time. Nothing shall oblige Alsecco to grant any trade credit terms to a Customer or continue to do so and Alsecco may revoke, vary or refuse any credit arrangement at any time as it may determine including, without limitation as a result of any credit checks which it may undertake. Alsecco may refuse to supply any Goods or other goods, in the event that to do so would take the Customer above the level of credit which Alsecco has granted to it and accordingly, Alsecco may withhold, delay or refuse the supply of the Goods or any other goods in such circumstances.
- 7.10 The Customer shall ensure that all information which it provides to Alsecco as part of any trade credit application process is accurate and complete. To the extent that any such information provided by the Customer to Alsecco includes any personal data, the same shall be treated in accordance with Alsecco's privacy policy as it may update the same from time to time and the Customer shall be responsible for bringing the same to the attention of the relevant data subject. Further, the Customer shall ensure that it has in place all relevant consents for the provision of such personal data to Alsecco or that it otherwise has a relevant basis for the provision of such information in accordance with and complies with, and otherwise complies with all relevant provisions of, the UK General Data Protection Regulation, the Data Protection Act 2018 and all other legislation applicable to the use of personal data.
- 7.11 The Customer shall be responsible for any bank charges incurred in making payments.
- 7.12 Alsecco reserves the right to apply payments to oldest invoices first where such invoices may remain outstanding.

8. Limitation of liability

- 8.1 Nothing in the Contract excludes or limits any liability which cannot legally be excluded or limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987.
- 8.2 Subject to clause 8.1, Alsecco shall under no circumstances be liable whether in contract, tort (including negligence), breach of statutory duty, arising out of the supply or use of the Goods or otherwise, howsoever arising for any costs, claims, damages, liabilities or expenses in respect of any:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of production;

- (d) wasted time or expenditure;
- (e) loss of agreements or contracts;
- (f) loss of anticipated savings;
- (g) loss of use or corruption of software, data or information;
- (h) loss of or damage to goodwill;
- (i) delayed completion or loss of use of buildings;
- (j) indirect, special or consequential loss;
- (k) pure economic loss;

and the parties agree that the categories of loss as referred to at this clause 8.2 shall be distinct and severable.

8.3 Without prejudice to clauses 8.1 and 8.2, Alsecco shall not be liable in respect of any costs, claims, damages, liabilities or expenses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Customer or any other person, including demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, the Customer's personnel, regulators and/or customers of the Customer.

8.4 Alsecco does not exclude liability for:

- (a) the cost of any goods purchased by the Customer as direct replacements for the Goods in the event that the Goods are damaged or defective nor the costs referred to in clause 5.2(e) but subject always to Alsecco's rights in relation to the taking of appropriate remedial action in accordance with clause 5 as relevant; nor
- (b) in respect of liability arising in accordance with clause 4.10 but subject always to Alsecco's rights in relation to the taking of appropriate remedial action in accordance with clause 4;

but in each case, the exclusions of liability at clause 8.2 and the limitation of liability provisions of clause 8.5 shall for the avoidance of doubt, in any event apply.

8.5 Subject to clause 8.1, Alsecco's total liability to the Customer arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, under warranty or arising out of the supply or use of the Goods or otherwise howsoever arising, shall in no circumstances exceed a sum equal to twice (x2) the total Price paid and payable under the Contract under which the liability occurred.

8.6 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise. The Customer acknowledges and agrees that the liability position set out herein is an accurate reflection of the level of risk to be

adopted by the parties and takes account of the commercial terms, including as to Price and the basis on which the parties have agreed to contract.

8.7 This clause 8 shall survive termination or expiry of the Contract.

9. Termination

9.1 Without limiting its other rights or remedies, Alsecco may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) other than as to payment which is dealt with in clause 9.1 (b), the Customer commits any material breach of the Contract and (if such breach is remediable) fails to remedy that breach within seven days of being notified in writing to do so;
- (b) the Customer fails to make any payment of the Price or part thereof on the due date and fails to remedy late payment within fourteen days from the due date;
- (c) the Customer'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.

9.2 Without limiting its other rights or remedies, the Customer may terminate the Contract on not less than fourteen days written notice to Alsecco if Alsecco commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 60 (sixty) days of being notified in writing of the breach.

9.3 Either party may terminate this Agreement with immediate effect by giving written notice to the other if:

- (a) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2);
- (b) the other party begins negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (c) the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (e) an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given or an administrator is appointed over the other party;
- (f) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.3(a) to clause 9.3(h) inclusive;
- (j) the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business.

9.4 Without limiting its other rights or remedies, Alsecco may suspend supply of the Goods under the Contract or any other contract between the Customer and Alsecco if:

- (a) the Customer becomes subject to any of the events in clause 9.3(a) to clause 9.3(h) inclusive or Alsecco reasonably believes that the Customer is about to become subject to any of them; or
- (b) the Customer fails to pay any amount due on the due date for payment; or
- (c) the Customer fails to take delivery of the Goods when they are tendered for delivery; or
- (d) if and to the extent that the value of the Goods and any other goods whether under this or any other contract delivered but not paid for, would exceed any credit limit applied by Alsecco in relation to the Customer and irrespective in each case of whether or not payment is overdue.

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

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

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

10. Force Majeure

10.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means an event beyond a party's reasonable control which by its nature could not have been foreseen or if it could have been foreseen was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, transport delays, trade dispute, breakdown of machinery, acts of God, war, terrorism, riot, civil commotion, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosion, collapse of building structures, fire, flood, storm, earthquake, loss at sea, epidemic, pandemic, natural disaster or extreme adverse weather conditions or default of suppliers or subcontractors, Government act, trade embargo, restriction on import or export imposed by a relevant authority or emergency.

10.2 In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four months, a party not affected may terminate the Contract by giving fourteen days' written notice to the affected party.

11. Confidentiality

11.1 Each party (a **recipient**) shall keep in strict confidence all information of a confidential nature relating to the business, affairs, customers or suppliers of the other party and all technical and commercial know-how, processes or initiatives which are of a confidential nature (**Confidential Information**) and have been disclosed to the recipient by the other party (**discloser**), its employees, agents or subcontractors and any other confidential information concerning the discloser's business, products and services which the recipient may obtain.

11.2 Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, representatives, contractors and advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 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.

11.4 This clause 11 shall survive the termination or expiry of the Contract.

12. Intellectual Property Rights

12.1 All Intellectual Property Rights and other proprietary rights in and to the Goods and all materials relating thereto including quotations, brochures, advertising literature, Specifications and descriptions vest in and shall remain vested in Alsecco and no rights in relation to the same are granted to the Customer except for the purpose of onward sale of the Goods by the Customer.

12.2 Alsecco makes no assurance nor gives any warranty as to the Intellectual Property Rights in the Goods or freedom from any infringement of any third party Intellectual Property Rights or other proprietary rights.

13. Data Protection

13.1 For the purposes of this clause 13, the terms controller, processor, personal data and processing shall have the meaning given to them in the UK General Data Protection Regulation (**UK GDPR**).

13.2 Each party will comply with all applicable requirements of the UK GDPR and any other applicable data protection law. The provisions in this clause 13 are in addition to and do not relieve, remove or replace a party's obligations or right under such laws.

13.3 The parties have determined that for the purposes of this Contract, Alsecco shall process any personal data provided by the Customer, as a processor on behalf of the Customer.

13.4 The Customer consents to and shall procure all required consents from its relevant personnel, representatives and agents in respect of all personal data provided by the Customer to Alsecco. The Customer is advised to refer to Alsecco's privacy policy on Alsecco's website and the Customer is notified that certain personal data may be required in order to provide Goods and to deal with various administrative procedures in connection with the Contract. In particular, Alsecco notifies the Customer that personal data of relevant individuals may be used by Alsecco and provided to Alsecco's external third party service providers, including finance providers for the purpose of the Contract including for the purpose of credit insurance, making credit reference searches, credit control, assessment and analysis and credit scoring and market and statistical analysis.

13.5 Alsecco shall in relation to any personal data provided by the Customer, process the same for the purposes of the Contract and in accordance with any reasonable documented instructions of the Customer. Alsecco shall also implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against any accidental loss or damage to the same.

13.6 The Customer provides its prior general authorisation for Alsecco to supply any personal data to any contractor or subcontractor of Alsecco as Alsecco may determine for the purpose of or in connection with the Contract, including the transfer of personal data outside the UK.

14. General

14.1 Alsecco 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. The Customer 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 Alsecco.

14.2 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.

14.3 Each party agrees that it 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 (but this shall not affect any separate warranty provided to the Customer as referred to in clause 5.1 where relevant). Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

14.4 No variation of the Contract shall be effective unless in writing and signed by a director of Alsecco and no person other than a director of Alsecco shall have the authority to vary the Contract but this shall not affect Alsecco's ability to amend the Conditions (being its standard terms and conditions) as it shall determine from time to time.

14.5 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.6 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 14.6 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.

14.7 Any notice given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing and shall be delivered personally or sent by

prepaid first-class post or other next working day delivery service or by commercial courier. A notice shall be deemed to have been received: if delivered personally, when left at the appropriate address; 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 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 14.7 shall not apply to the service of any proceedings or other documents in any legal action.

- 14.8 Unless it expressly states otherwise, the Contract does not give rise to any rights of a third party under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 14.9 Nothing in this Contract is in any way intended to affect the statutory rights afforded to an end consumer of the Goods.
- 14.10 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.
- 14.11 Each party irrevocably agrees that the English courts 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.
- 14.12 The Customer shall not sell, export or re-export directly or indirectly to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with the Contract that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.
- 14.13 The Customer shall undertake its best efforts to ensure that the purpose of clause 14.12 is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- 14.14 The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of clause 14.12.
- 14.15 Any violation of clauses 14.12 to 14.14 (inclusive) shall constitute a material breach of an essential element of this Contract and Alsecco shall be entitled to seek appropriate remedies including but not limited to:
- (a) termination of this Contract; and
 - (b) a payment from the Customer of 15% of the total value of this Contract or price of the goods exported, whichever is higher to reflect the costs incurred by Alsecco.

14.16 The Customer shall immediately inform Alsecco about any problems in applying clauses 14.12 to 14.14 (inclusive), including any relevant activities by third parties that could frustrate the purpose of clause 14.12. The Customer shall make available to Alsecco information concerning compliance with the obligations under clauses 14.12 to 14.14 (inclusive) within two weeks of a request for such information.

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