



## **ZONES (UK) LIMITED TERMS AND CONDITIONS OF SALE AND SUPPLY**

The Customer should read these terms and conditions of sale and supply carefully before placing an order for any goods or services with Zones. The Customer should understand that by ordering any goods or services from Zones, it agrees to be bound by these terms and conditions of sale.

The Customer should print and retain a copy of these terms and conditions and a copy of its order for future reference.

The Customer's attention is drawn in particular to the provisions of clause 13.

### **1. INTERPRETATION**

**Definitions.** In these Conditions, the following definitions apply:

1.1

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

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 17.6.

**Contract:** the contract between Zones and the Customer for the sale and/or supply and purchase of the Goods and/or Services in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from Zones.

**Delivery Location:** has the meaning given in clause 5.1.

**Force Majeure Event:** has the meaning given in clause 15.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's written or verbal order for the Goods and/or Services.

**Order Confirmation:** has the meaning given to it in clause 2.3.

**Services:** the services supplied by Zones to the Customer as set out in the Services Specification.

**Services Specification:** the description or specification of the Services provided in writing by Zones to the Customer.

**Goods Specification:** has the meaning given to in clause 3.2.

**Zones:** Zones (UK) Limited (a company incorporated and registered in England and Wales under company number 2823778 with registered address of St Clements House, 27 Clements Ln, London EC4N 7AE.



1.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) 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.
- (e) A reference to **writing** or **written** includes faxes and e-mails capable of being stored in permanent form.

2. **BASIS OF CONTRACT**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions which Zones is free to accept or decline in its absolute discretion.
- 2.3 The Order shall only be deemed to be accepted when Zones sends an e-mail to the Customer headed "Order Placed – Ref:\*\*\*\*\*" (where \*\*\*\*\* is the order reference number mentioned in clause 2.4 below) ("the Order Confirmation") to the email address it has been given by the Customer. The Contract shall come into existence upon the sending of the Order Confirmation by Zones pursuant to which Zones shall supply the Goods and/or provide the Services and the Customer shall pay for those Goods and/or Services. Any other e-mails or correspondence sent (including any email referred to in clause 2.4 below, any automatically generated email or otherwise) by Zones to the Customer prior to the sending of the Order Confirmation shall not under any circumstances constitute an offer or cause any Order to be accepted or deemed to be accepted by Zones.



- 2.4 Without prejudice to clause 2.3 above, upon receipt of an Order, Zones shall send an email acknowledging that Zones has received an Order, in which Zones shall notify the Customer of the order reference number assigned to that Order. The Customer should quote the order number in all subsequent correspondence with Zones relating to that Order and/or Contract.
- 2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Zones which is not set out in the Contract.
- 2.6 Any samples, drawings, descriptive matter, or advertising produced by Zones and any descriptions or illustrations contained in Zones' catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 A quotation for the Goods and/or Services given by Zones shall not constitute an offer. Without prejudice to the foregoing, a quotation shall only be valid for a period of 20 Business Days from its date of issue.

### **3. GOODS**

- 3.1 The specification, quantity, quality and description of the Goods shall be as set out in Zones' quotation (if an Order is made in relation to such quotation without amendment and subsequently accepted by Zones in an Order Confirmation) or the Order (the "Goods Specification").
- 3.2 The Customer is responsible for ensuring that the terms of the Order and any applicable Goods Specification are complete and accurate and for providing Zones with any information within a sufficient time necessary to enable Zones to perform the Contract in accordance with its terms.
- 3.3 Zones shall be entitled to amend the Goods Specification at any time and without notifying the Customer if required to comply with any applicable safety requirements, UK or EU requirements or other applicable statutory or regulatory requirements, or where such amendments do not materially affect the nature or quality of the Goods.

### **4. SERVICES**



- 4.1 Zones shall supply the Services to the Customer in accordance with the Services Specification in all material respects.
- 4.2 Zones shall use all reasonable endeavours to meet any performance dates specified in the Services Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.3 Zones shall be entitled to amend the Services Specification at any time and without notifying the Customer if required to comply with any applicable safety requirements, UK or EU requirements or other applicable statutory or regulatory requirements, or where such amendments do not materially affect the nature or quality of the Services.
- 4.4 Zones warrants to the Customer that the Services will be provided using reasonable care and skill.

## **5. DELIVERY OF THE GOODS**

- 5.1 Either:
  - (a) Zones shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location") at any time after Zones notifies the Customer that the Goods are ready; or
  - (b) the Customer shall collect the Goods from Zones' premises as notified to the Customer or such other location as may be notified by Zones prior to delivery ("Delivery Location") within 3 Business Days of Zones notifying the Customer that the Goods are ready,in either case, as set out in the Contract.
- 5.2 Delivery of the Goods shall be completed:
  - (a) in the case of delivery in accordance with clause 5.1(a), on the Goods' arrival at the Delivery Location; or
  - (b) in the case of delivery in accordance with clause 5.1(b), on the completion of loading of the Goods at the Delivery Location (and Zones shall be under no obligation under section 32(2) of the Sale of Goods Act 1979.
- 5.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Zones shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to



provide Zones with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. Zones shall be entitled to deliver the Goods in advance of the delivery dates upon giving reasonable notice to the Customer.

- 5.4 If Zones fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Zones shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Zones with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5 If the Customer fails to take delivery of the Goods within 3 Business Days of Zones notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Zones' failure to comply with its obligations under the Contract, Zones may, at its discretion and without limiting any other right or remedy available to Zones:
- (a) store the Goods until actual delivery is permitted by the Customer and charge the Customer for the reasonable costs (including insurance) of transportation, storage or suspension; and/or
  - (b) sell the Goods at the best price reasonably obtainable and (after deducting all reasonable costs incurred in so doing, including transportation, storage and selling expenses) account to the Customer for the excess over the price that would have been payable for the goods under the Contract or charge the Customer for any shortfall below the price that would have been payable under the Contract.
- 5.6 Zones may deliver the Goods by instalments, which shall be invoiced and paid for separately. 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.
- 5.7 Zones shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Zones reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by

instalments, the outstanding balance of Goods remaining to be delivered; and

- (b) if Zones requires the Customer to return any packaging materials to Zones, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Zones shall reasonably request. Returns of packaging materials shall be at Zones' expense.

## **6. QUALITY OF GOODS**

- 6.1 For Goods manufactured solely by Zones, Zones warrants that on delivery, the Goods shall conform in all material respects with the Goods Specification and be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 6.2 For Goods not manufactured solely by Zones, Zones does not, subject to clause 16.3 below, give any warranty or guarantee as to the Goods quality, fitness for purpose or otherwise.
- 6.3 Zones shall use its reasonable endeavours to procure that the Customer has the benefit of any warranty or guarantee given by the manufacturer in respect of such Goods.
- 6.4 Subject to clause 6.5, if:
  - (a) the Customer gives notice in writing to Zones within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
  - (b) Zones is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by Zones) returns such Goods to Zones' place of business at Customer's cost,

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

- 6.5 Zones shall not be liable for Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:
  - (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 6.4;

- (b) the defect arises because the Customer failed to follow Zones' oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of Zones following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of Zones;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.6 Except as provided in this clause 6, Zones shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1 and/or, if clause 6.2 applies, the warranty provided by the manufacturer of such Goods.

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

6.8 These Conditions shall apply to any repaired or replacement Goods supplied by Zones.

## **7. RETURNS**

7.1 Please note that special terms apply to Consumers who wish to return goods, which prevail over the provisions of this Clause 7. Customers who are Consumers are referred to Clause 8.

7.2 Zones (UK) Limited is committed to providing our customers with the highest quality products and service. However, on rare occasions, products may be found to be faulty or defective. In such cases we offer the returns facilities described below.

7.3 Unless otherwise stated in the manufacturer's documentation, all goods delivered to a UK mainland address carry a 12-month manufacturer's warranty.

- 7.4 If you purchase goods in the course of your business, the following provisions of this Clause shall apply. Other than the express provisions set out in these terms and conditions, all other terms and the implied terms or warranties relating to the supply of goods are excluded to the fullest extent permitted by law. Goods are not tested or sold as being fit for any particular application or for use under specific conditions, unless expressly agreed in writing.
- 7.5 If you purchase services in the course of your business, the following provisions of this Clause shall apply. Zones (UK) Limited shall use its skill and expertise to carry out any contracted works (the "Service(s)") to a standard equivalent to that of a competent computer professional, and shall warrant our work as free from defects, for a period of 30 days after completion. In particular, we cannot be held responsible for any fault or damage not caused by Zones (UK) Limited services' engineers or its contracted agents. In the event of a claim arising relating to the level of skill and judgement applied in the course of providing Services, Zones (UK) Limited reserves at its sole discretion the right to appoint an independent expert in the field to appraise the work carried out in the execution of the Service(s). Additionally, Zones (UK) Limited cannot be held responsible for equipment installed or configured when the equipment has subsequently been altered or configured by persons other than Zones (UK) Limited. Except as set out here, all other express or implied terms or warranties relating to the Services are excluded to the fullest extent permitted by law.
- 7.6 Subject to the right of Consumers to return goods for refund under The Consumer Protection (Distance Selling) Regulations 2000 (see Clause 13), Zones (UK) Limited does not sell products on a trial basis. Customers are strongly advised to check suitability and specifications of products before ordering. In some instances, Customers may benefit from special price discounts issued by a manufacturer specifically for their benefit. Such goods are not returnable to the manufacturer and may not be sold to other customers. Accordingly, orders for such goods cannot be cancelled and Zones (UK) Limited can only accept a return of such Goods where they prove to be defective and the Goods are returned for repair or replacement.
- 7.7 In the event that Zones (UK) Limited, at its discretion (unless the Consumer Protection (Distance Selling) Regulations 2000 apply, see Clause 13), agrees to accept the return for credit of unwanted products, the goods must be returned with Zones (UK) Limited's prior written agreement within 14 days of delivery. The goods must be unopened and in perfect re-saleable condition. All goods returned in these circumstances (except where the Consumer Protection (Distance Selling) Regulations 2000 apply, see Clause 13) will be subject to a handling fee of 15% of Zones (UK) Limited's sale price for the



goods, or £20, whichever is the greater. "Open box" goods may be subjected to a 30% restocking fee, or such fee charged by Zones suppliers, whichever is greater.

- 7.8 Subject to testing to verify any alleged fault, we will accept the return of defective goods for full refund or replacement at our option, if, but only if, the goods are returned within 14 days of delivery. Consumers who wish to return defective products are not obliged to follow the processes set out below, but are recommended to do so as this helps us to provide a more efficient returns service.
- 7.9 Zones (UK) Limited's technical support staff or Customer Support staff, as appropriate, will advise you of which method of delivery to use to return the products. Depending on the nature of the product purchased, we will either arrange a courier collection, or request that you return the product directly to us. If the goods are found on inspection to be defective, the cost of returning the item will be refunded to you. Authorised product returns must be sent to: Customer Returns, Zones (UK) Limited, St Clements House, 27 Clements Ln, London EC4N 7AE.
- 7.10 Zones (UK) Limited offers a "no charge" collection, repair and delivery service (on the UK mainland only) for hardware which is shown to be faulty provided that the fault is reported within 14 days of delivery. If we have arranged for a courier collection of your product, we are unable to specify the collection time, and it is your responsibility to ensure that someone will be present at the collection address when the courier arrives.
- 7.11 All returned goods (except those returned under Clause 8) must be accompanied by Zones (UK) Limited's Returns Authorisation number ('RA Number') which can be obtained by contacting your Internal Sales Account Manager on 020 7608 7676. Returned goods will not be accepted without an RA Number. Do not write directly on the manufacturer's packaging. Please write the RA number on the address label provided with the Returns Authorisation and attach it to the returned package. Any defacement of the manufacturer's packaging or damage caused by inadequate packaging may result in the rejection of the return or an additional restocking fee, at Zones (UK) Limited's sole discretion.
- 7.12 Zones (UK) Limited cannot accept liability for packages damaged during transit. It is the Customer's responsibility to wrap the product adequately to prevent damage.



- 7.13 Proof of postage is not proof of delivery and you are therefore strongly advised to send your package by recorded delivery, registered post or courier, and to insure the goods for their full value.
- 7.14 On receipt of the returned product, we will test it to identify the fault you have notified to us.
- 7.15 If following the testing process, the product is found to be in good working order without defect, we will return the product to you, and the carriage costs of this return will be your responsibility. Please note that if you have, in the meantime, required us to provide you with a replacement product before completion of the testing process, you will have to pay for this product also. This Clause does not apply to Consumers returning goods pursuant to Clause 13.
- 7.16 Unless otherwise stated in the manufacturer's documentation, all goods delivered to a UK mainland address carry a 12-month manufacturer's warranty. Customers who wish to make a warranty claim must comply with the manufacturer's instructions and warranty procedure. In order to resolve your problem as quickly as possible, we may refer you to the product manufacturer who will deal directly with the return. In these instances, we will provide you with the contact information for the relevant manufacturer. If you are a consumer, this does not affect your statutory rights.
- 7.17 This warranty shall not apply if the goods have been worked upon, altered or damaged in any way by the Customer or its employees or agents, or to goods not used in accordance with the manufacturer's instructions.
- 7.18 No software on which seals have been broken can be returned for credit. If any software discs are faulty, the manufacturer will replace them. If you are a consumer this does not affect your statutory rights. Please note Software Licences are non-returnable unless the software is materially non-compliant with its specification or the physical media on which it is supplied is defective.
- 7.19 Some manufacturers require goods to be returned within 14 days or less in order to secure refund. In such instances the manufacturer's time limit will apply and therefore Zones (UK) Limited will only accept a return within 14 days of purchase or the manufacturer's time limit, if that limit is less than 14 days. This is clearly indicated on the catalogue page for the particular product. We can only accept the return of a defective product that does meet the description, if they are returned to us within 14 days. Beyond that period you will be deemed to have accepted the goods and you must therefore



check the goods promptly on receipt. Please note that this period is reduced to 7 days for clearance bargains.

## **8. THE CONSUMER PROTECTION (DISTANCE SELLING) REGULATIONS 2000**

- 8.1 Contracts for the purchase of goods by a Customer not acting in the course of a business and made over the telephone or through the Zones (UK) Limited website, or by mail order, are, with the exception of certain excepted contracts, subject to The Consumer Protection (Distance Selling) Regulations 2000 ('the Regulations').
- 8.2 If the Regulations apply, Customers may cancel goods purchased from Zones (UK) Limited by sending a written notice of cancellation by post or hand delivery addressed to Customer Services at, Zones (UK) Limited St Clements House, 27 Clements Ln, London EC4N 7AE.
- 8.3 The notice of cancellation must be delivered within 7 working days of the day after date of delivery of the goods.
- 8.4 The Customer will be responsible for the cost of returning the goods if he or she exercises this right of cancellation under the Regulations. If the Customer does not actually return the goods to Zones (UK) Limited, the Customer is under a duty to make the goods available for collection at the Customer's expense from the address to which they were delivered.
- 8.5 The Customer is under a duty to retain possession of the goods whilst awaiting return to Zones (UK) Limited and to take reasonable care of them during this period. The Customer will be liable for any loss of or damage to the goods if he or she fails to comply with this obligation.

## **9. TITLE AND RISK**

- 9.1 The risk in the Goods shall pass to the Customer on delivery.
  - (a) Title to the Goods shall not pass to the Customer until Zones has received payment in full (in cash or cleared funds) for the Goods.
- 9.2 Until title to the Goods has passed to the Customer, the Customer shall:
  - (a) hold the Goods on a fiduciary basis as Zones' bailee;



- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Zones' property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) notify Zones immediately if it becomes subject to any of the events listed in clause 12.2; and
- (f) give Zones such information relating to the Goods as Zones may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

- 9.3 If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 12.2, or Zones reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Zones may have, Zones may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **10. PRICE AND PAYMENT**

- 10.1 The price of the Goods and/or Services shall be the price set out in Zones' quotation (if an Order is made in relation to such quotation without amendment and subsequently accepted by Zones in an Order Confirmation) or the Order, or, if no price is quoted, the price set out in Zones' published price list in force as at the date of delivery.
- 10.2 Zones 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 Zones' 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 Zones adequate or accurate information or instructions.
- 10.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 10.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Zones, pay to Zones such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 10.5 Zones may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 10.6 The Customer shall pay the invoice in full and in cleared funds within 20 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Zones. Time of payment is of the essence.
- 10.7 If the Customer fails to make any payment due to Zones under the Contract by the due date for payment (**due date**), then without prejudice to any other right or remedy that Zone may have under the contract or at law:
  - (a) the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
  - (b) Zones reserves the right to require payment in advance for any undelivered Goods and/or Services yet to be provided; and/or
- 10.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Zones in order to justify withholding payment of any such amount in whole or in part. Zones 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 Zones to the Customer.



## **11. TERMINATION AND SUSPENSION**

- 11.1 Without limiting its other rights or remedies, Zones may terminate the Contract with immediate effect:
- (a) by giving written notice to the Customer if the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing of the breach.
  - (b) by giving the Customer 30 days' written notice;
  - (c) notwithstanding 11.1(a), with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment;
- 11.2 The Customer may terminate the Contract by giving Zones not less than 3 months' written notice. ]
- 11.3 Without limiting its other rights or remedies, Zones shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Zones if the Customer fails to make payment of any amount due under this Contract on the due date for payment.
- 11.4 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to Zones all of Zones' outstanding unpaid invoices and interest and, in respect of Services and/or Goods supplied but for which no invoice has yet been submitted, Zones shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **12. CUSTOMER'S INSOLVENCY OR INCAPACITY**

- 12.1 If the Customer becomes subject to any of the events listed in clause 12.2, or Zones reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any



other right or remedy available to Zones, Zones may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Zones without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

12.2 For the purposes of clause 12.1, the relevant events are:

- (a) the Customer 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences 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 its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (c) (being a company) 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 Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer 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;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;



- (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2(a) to clause 12.2(h) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (k) the Customer's financial position deteriorates to such an extent that in Zones' opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

12.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

### **13. IP INDEMNITY**

13.1 If any claim is made against the Customer that the Goods infringe or that their use or resale infringes the intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Customer, Zones shall if responsible, indemnify the Customer against all reasonable loss and costs awarded against or reasonably incurred by the Customer in connection with the claim, or paid or agreed to be paid by the Customer in settlement of the claim provided that:

- (a) Zones is given full control of any proceedings or negotiations in connection with the claim;
- (b) the Customer shall give Zones all reasonable assistance for the purposes of any such proceedings or negotiations;
- (c) except pursuant to a final award, the Customer shall not pay or accept the claim, or compromise any such proceedings without the





prior consent in writing of Zones (which shall not be unreasonably withheld);

- (d) the Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);
- (e) Zones shall be entitled to the benefit of, and the Customer shall accordingly account to the Zones for, all damages and costs (if any) awarded in favour of the Customer which are payable by, or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- (f) without limiting any duty of the Customer at common law, Zones may require the Customer to take such steps as Zones may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which Zones is liable to indemnify the Customer under this clause.

13.2 Notwithstanding the foregoing Zones may at its option and expense choose to procure for the Customer the right to continue using the Goods or replace or modify the same so that they become non-infringing.

13.3 The Customer shall indemnify Zones from and against any liability or claim for infringement of third party intellectual property rights which results from Zones' compliance with the Customer's designs, instructions or specifications.

#### **14. LIMITATION OF LIABILITY**

14.1 Nothing in this Contract shall limit or exclude Zones' liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for Zones to exclude or restrict liability.



14.2 Subject to clause 14.1:

- (a) Zones shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Zones' total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods and/or Services.

15. **FORCE MAJEURE**

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 any 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, 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, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Zones or subcontractors.

16. **EXPORT TERMS**

- 16.1 In this clause 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 16.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 16 shall (subject to any special terms agreed in



writing between the customer and Zones) apply notwithstanding any other provision of this Contract.

- 16.3 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them and shall indemnify Zones against all costs charges and other expenses which might arise from any failure by the Customer properly to advise Zones of the legislation and regulations governing the importation of the Goods.
- 16.4 Unless otherwise agreed in writing between the Customer and Zones, the Goods shall be delivered fob the air or sea port of shipment and the Zones shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 16.5 The Customer shall be responsible for arranging for testing and inspection of the Goods at Zones' premises before shipment. Zones shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 16.6 Payment of all amounts due to Zones shall be made by such method and on such dates as Zones shall specify or otherwise agree in writing.
- 16.7 The Customer undertakes not to offer the Goods for resale in any country notified by Zones to the Customer at or before the time the Customer's order is placed, or to sell the Goods to any person if the Customer knows or has reason to believe that person intends to resell the Goods in any such country.

## **17. GENERAL**

### **17.1 Assignment and subcontracting.**

- (a) Zones may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Zones.

### **17.2 Notices.**



- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) 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, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17.3 **Severance.**

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.



- 17.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Zones.
- 17.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England.