

STANDARD TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 The following definitions and rules of interpretation apply in these Conditions:

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

“Buyer” means the person who accepts a quotation of the Seller for the sale of the Goods and / or for the provision of the Services or whose order for the Goods and / or Services is accepted by the Seller.

“Buyer Default” means any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation.

“Conditions” means these Conditions.

“Contract” means the contract for the purchase and sale of the Goods and / or Services, being the Order (once accepted by the Seller in accordance with clause 2.1) and these Conditions.

“COVID-19” means the novel coronavirus pandemic as declared by the World Health Organisation on 11 March 2020.

“Delivery” shall have the meaning given in clause 7.1 and “Delivered” and “Deliveries” shall be construed accordingly.

“Delivery Date” means the date specified for Delivery of Goods specified in an Order in accordance with clause 3.7.

“Force Majeure Event” means any circumstance not in a party’s reasonable control including:

- (i) acts of God, flood, drought, earthquake or other natural disaster;
- (ii) epidemic or pandemic;
- (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (iv) nuclear, chemical or biological contamination, or sonic boom;
- (v) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (vi) without limitation, any effects arising from or in connection with COVID-19 including, but not limited to, any actions, lockdowns (local or national), recommendations, announcements or restrictions, related to its subject matter (whether made by a government body, authority, public health organisation or other similar official body) which prevents, hinders or delays a party’s performance of its obligations under the Contract;
- (vii) collapse of buildings, fire, explosion or accident;
- (viii) any labour or trade dispute, strikes, industrial action or lockouts;
- (ix) non-performance by Sellers or subcontractors; and
- (x) interruption or failure of utility service.

“Goods” means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply (if any) in accordance with these Conditions.

“Goods Specification” means any specification for the Goods, including any relevant plans or drawings, that is agreed in Writing by the Buyer and the Seller.

“Insolvency Event” means if:

- (i) a 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 (being a company or limited liability partnership) 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; or

- (ii) a party 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 party is a company) where these events take place for the sole purpose of a scheme for its solvent amalgamation of the party with one or more other companies or its solvent reconstruction; or
- (iii) (being a company) a petition is filed which is not withdrawn within 30 days of such filing, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of a party, other than for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party; or
- (iv) (being a company) an application is made to court, or an order is made, for the appointment of an administrator of a party or if a notice of intention to appoint an administrator is given or if an administrator is appointed over it; or
- (v) (being a company) the holder of a qualifying floating charge over a party's assets has become entitled to appoint or has appointed an administrative receiver; or
- (vi) a person becomes entitled to appoint a receiver over a party's assets or a receiver is appointed over a party's assets; or
- (vii) a creditor or encumbrancer 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 a party's assets and such attachment or process is not discharged within 14 days; or
- (viii) any event occurs, or proceeding is taken, with respect to a party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (i) to (vii) (inclusive); or
- (ix) a party suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business.

"Order" means an order for Goods and / or Services submitted by the Buyer in Writing in accordance with clause 3.

"Price" means the price payable for the Goods and / or the Services, including as applicable any packaging, insurance and shipping costs.

"Seller" means Steatite Limited (registered in England and Wales under company number 4403746) whose registered office is at: 2 Ravensbank Business Park, Hedera Road, Redditch, Worcestershire, B98 9EY, United Kingdom.

"Services" the Services (if any) which the Seller is to supply in accordance with these Conditions.

"Services Specification" means the description or specification for the Services provided in writing by the Seller to the Buyer.

"Specification" means a Goods Specification or a Services Specification (as the case may be).

"Writing" includes fax and e-mail.

- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. **Basis of the sale**

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods and / or the Services in accordance with any Order of the Buyer which is accepted by the Seller, subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions (whether express or implied by trade custom, course of dealing or otherwise) subject to which any such Order is made or purported to be made, by the Buyer. The Order shall only be deemed to be accepted when the Seller issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the parties.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods and / or the Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed in Writing.

- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods and / or the provision of the Services which is not confirmed in Writing by the Seller, is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed in Writing.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.6 In performing its obligations under the Contract, the Buyer shall comply with all applicable laws, statutes, regulations and codes from time to time in force.

3. Orders and Specifications

- 3.1 A quotation by the Seller does not constitute an offer, and the Seller reserves the right to withdraw or amend any quotation at any time. No Order shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative. Such confirmation shall include the relevant quotation detailing and / or confirming the Price.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable Specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and / or the Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods and / or the Services shall be those set out in the Order (if accepted by the Seller).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.5 The Seller reserves the right to make any changes in the of the Goods Specification which are required to conform to any applicable statutory or EU requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.6 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.7 Each Order shall be deemed to be a separate offer by the Buyer to purchase Goods and / or Services on these Conditions, which the Seller shall be free to accept, modify or decline at its absolute discretion. Each Order shall:
 - 3.7.1 be given in Writing;
 - 3.7.2 specify the type and quantity of Goods ordered (if any);
 - 3.7.3 specify the scope of Services to be provided (if any);
 - 3.7.4 specify the Delivery Date by which the Goods (if any) specified in the Order are to be ready for collection and / or Delivery (as applicable) unless the parties agree that the Buyer may specify the Delivery Date after placing the Order. If the Delivery Date is to be specified after the placing of an Order, the Buyer shall give the Seller reasonable advance notice of the relevant information; and
 - 3.7.5 specify the date or dates on which the Services are to be provided.

4. Price

- 4.1 The Price shall be the Seller's quoted price in response to an Order submitted by the Buyer pursuant to clause 3 All Prices quoted are valid for 30 days only, unless otherwise specified by the Seller, or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before Delivery, to increase the Price to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (but not limited to, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in Delivery Dates, quantities or Specifications which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation, and unless otherwise agreed in Writing between the Buyer and the Seller, all Prices for Goods are given by the Seller on an "ex works" basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The Price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller on receipt of a valid VAT invoice from the Seller.

5. **Terms of payment**

5.1 Unless agreed otherwise in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the Price:

5.1.1 (in relation to Goods) on or at any time after Delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer fails to take Delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered Delivery of the Goods;

5.1.2 (in relation to Services) immediately following provision of the Services (or, where the provision of the Services requires multiple phases of provision, at such intervals as are detailed in the relevant quotation).

5.2 The Seller's invoice may specify that the Price is to be payable on a currency other than sterling in which case the applicable rate of exchange shall be the relevant sterling spot exchange rate in force at commencement of business on the date of the invoice.

5.3 Unless agreed otherwise in Writing between the Buyer and the Seller, the Buyer shall pay the Price in cleared funds to the bank account nominated in Writing by the Seller within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the Price, notwithstanding that Delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time for payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.4.1 cancel the Contract or suspend any further Deliveries and / or the provision of any further Services to the Buyer;

5.4.2 appropriate any payment made by the Buyer for such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) and / or Services as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.4.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above HSBC Bank base rate in force from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.5 If the Buyer disputes in good faith any invoice or other statement of monies due, the Buyer shall immediately notify the Seller in Writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Seller shall provide all evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of the Buyer giving notice to the Seller, the dispute shall be resolved in accordance with clause 16.11. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 5.3.

5.6 Without prejudice to any right to claim for interest under the law or under the Contract all payments payable to the Seller by the Customer under the Contract shall become immediately due and payable on expiry or termination of the Contract for any reason.

6. **Title and Risk**

6.1 Risk in Goods shall pass to the Buyer on Delivery.

6.2 Title to Goods shall not pass to the Buyer until the Seller receives payment in full (in cash or cleared funds) for the Price of such Goods.

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

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

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to those Goods; and

6.3.3 maintain those Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Seller. The Buyer shall obtain an endorsement of the Seller's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Buyer shall allow the Seller to inspect those Goods and the insurance policy.

6.4 If before title to Goods passes to the Buyer the Buyer becomes (or the Seller, acting reasonably, considers that the Buyer is likely to become) subject to an Insolvency Event then, without limiting any other right or remedy the Seller may have the Seller may at any time:

6.4.1 require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

6.4.2 if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the relevant Goods are stored to recover them.

7. **Delivery**

7.1 Delivery of the Goods shall be completed by the Buyer (or the Buyer's carrier) collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for Delivery is agreed, by the Seller delivering the Goods to that place.

7.2 Any dates quoted for Delivery of the Goods are approximate only and the Seller shall not be liable for any delay in Delivery of the Goods howsoever caused. Time for Delivery shall not be of the essence. The Goods may be delivered by the Seller in advance of the quoted Delivery date upon the Seller giving reasonable notice to the Buyer.

7.3 The Buyer shall notify the Seller of any shortfall in the quantity of Goods delivered or (in the case of Goods delivered by the Seller) any loss or damage suffered by the Goods during carriage from the Seller's premises to the place of Delivery, within 7 days of Delivery. In such cases of shortfall, or loss or damage during transit, the Seller's liability shall be limited to the replacement, or the refunding to the Buyer the invoice value, of the Goods in question. The Seller shall have no liability for any shortfall in or loss or damage to the Goods suffered in transit, which is not so notified by the Buyer.

7.4 Where the Goods are to be delivered in instalments, each Delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

7.5 If the Buyer fails to take Delivery of the Goods within one Business Day of being notified by the Seller that the Goods are ready to be Delivered, or fails to give the Seller adequate delivery instructions at the time stated for Delivery in the Contract (otherwise by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then Delivery of the Order shall be deemed to have been completed at such time and without prejudice to any other right or remedy available to the Seller, the Seller may:

7.5.1 store the Goods (at the Buyer's risk) until actual Delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

7.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7.6 Delays in the Delivery of an Order shall not entitle the Buyer to:

7.6.1 refuse to take Delivery of the Order;

7.6.2 claim damages; or

7.6.3 terminate the Contract, subject always to clause 13.1.2.

and the Seller shall have no liability for any failure or delay in delivering an Order to the extent that any failure or delay is caused by the Buyer's failure to comply with its obligations under these terms and conditions.

8. **Supply of Services**

8.1 The Seller shall supply the Services to the Buyer in accordance with the Services Specification in all material respects.

8.2 The Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in any Order but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

8.3 The Seller reserves the right to amend the Services Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.

9. Warranties and liability

9.1 Subject to the conditions set out below the Seller warrants that the Goods:

9.1.1 will correspond with their agreed Goods Specification at the time of Delivery and will be free from defects in design, material and workmanship for a period of:

- (i) 90 days from Delivery where such Goods are rechargeable batteries; and
- (ii) 12 months from Delivery for any other Goods;

unless the parties agree otherwise;

9.1.2 will at the time of Delivery be fit for the specific purpose made known in Writing by the Buyer to the Seller and detailed in the relevant Order, provided that the Buyer has at the same time provided the Seller with full details and specifications of the specific uses intended by the Buyer and of any equipment in which the Goods will be utilised.

9.2 The warranty in clause 9.1.1 is given by the Seller subject to the following conditions:

9.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from the Goods Specification, any drawing, design or specification supplied by the Buyer;

9.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

9.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

9.2.4 the above warranty does not extend to Goods, parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

9.3 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law, including for the avoidance of doubt the terms implied by:

9.3.1 sections 13 to 15 of the Sale of Goods Act 1979); and

9.3.2 sections 3, 4 and 5 of the Supply of Goods and Services Act 1982.

9.4 The Buyer may reject any Goods delivered to it that do not comply with their agreed Goods Specification provided that:

9.4.1 notice of rejection is given to the Seller within 5 Business Days of Delivery; and

9.4.2 none of the events listed in clause 9.6 apply.

9.5 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.

9.6 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract:

9.6.1 by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods and / or the Services, if the delay or failure was due to a Force Majeure Event;

9.6.2 for any failure of any Goods to comply with the warranty set out in clause 9.1.1 in any of the following events:

(i) the Buyer makes any further use of those Goods after giving notice in accordance with clause 9.4.1

(ii) the defect arises because the Buyer failed to follow:

(a) the Seller's oral or written instructions for the storage, commissioning, installation, handling, use and maintenance of the Goods or those of any manufacturer of any part of the Goods;

(b) the guidelines and / or instructions for use, storage and charging and /or discharging of any battery cell forming part of the Goods as issued by such battery cell's manufacturer (or (if there are no such guidelines and / or instructions) good trade practice regarding the same); or

- (iii) any defects relating to the design, assembly or manufacture of the Buyer's own equipment or premises to which the Goods are to be affixed or combined
 - (iv) any defects in the Goods caused by
 - (a) the Buyer's shipment or storage of the Goods,
 - (b) equipment or articles not supplied by the Seller;
 - (c) weather conditions, accident, misuse, neglect, abuse, mishandling, misapplication, modification, alteration, improper installation, service or maintenance, any failure due to an external natural phenomenon, or excessive dust, chemicals, oils, salt water and sun light;
 - (v) the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer;
 - (vi) the Buyer alters or repairs those Goods without the written consent of the Seller;
 - (vii) the defect arises as a result of fair wear and tear, wilful damage, negligence, or use of the Goods for any purpose and / or use not specifically made known to the Seller pursuant to clause 9.1.2; or
 - (viii) the Goods differ from their description and / or the specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 9.6.3 If the Seller's performance of any of its obligations under the Contract is prevented or delayed by any Buyer Default:
- (i) without limiting or affecting any other right or remedy available to it, the Seller shall have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
 - (ii) the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 9.6.3; and
 - (iii) the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.
- 9.7 If the Buyer rejects Goods under clause 9.4 then provided always that the Buyer has first returned the relevant Goods to the Seller in appropriate packaging (and such Goods have been received by the Seller) the Buyer shall be entitled to:
- 9.7.1 require the Seller to repair or replace the rejected Goods; or
 - 9.7.2 require the Seller to repay the price of the rejected Goods in full
- and once the Seller has complied with the Buyer's request, it shall have no further liability to the Buyer for the rejected Goods' failure to comply with clause 9.1.1.
- 9.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

10. **Indemnity**

- 10.1 The Buyer hereby indemnifies the Seller and undertakes to keep the Seller indemnified against all costs, charges, liabilities or expenses, including legal costs reasonably incurred by the Seller in exercising any of its rights contained in these conditions or making any claim against the Buyer in the event that the Buyer fails to pay any sums due to the Seller under the terms of the Contract on their due dates.
- 10.2 The Seller shall indemnify the Buyer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other reasonable and proper professional costs and expenses) suffered or incurred by the Buyer arising out of or in connection with any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods. If any third party makes a claim, or notifies an intention to make a claim, against the Buyer that may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the Seller's liability under this indemnity is conditional on the Buyer:
- 10.2.1 as soon as reasonably practicable, giving written notice of the Claim to the Seller, specifying the nature of the Claim in reasonable detail;
 - 10.2.2 not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Seller;

- 10.2.3 giving the Seller and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Buyer, to enable the Seller and its professional advisers to examine them and to take copies (at the Seller's expense to assess the Claim); and
- 10.2.4 giving (and being deemed to have given) the Seller sole authority to avoid, dispute, compromise or defend the Claim;

and nothing in this clause 10.2 shall restrict or limit the Buyer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

11. Confidentiality

- 11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.
- 11.2 Each party may disclose the other party's confidential information:
 - 11.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
 - 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 No party shall use any 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.

12. Liability

- 12.1 Nothing in this clause 12 shall limit the Buyer's payment obligations under the Contract.
- 12.2 Nothing in these terms and conditions limits any liability which cannot legally be limited, including liability for:
 - 12.2.1 death or personal injury caused by negligence;
 - 12.2.2 fraud or fraudulent misrepresentation;
 - 12.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); and
 - 12.2.4 breach of section 2 of the Consumer Protection Act 1987.
- 12.3 Subject to clauses 12.1 and 12.2 neither party shall be liable to the other party, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill (in each case whether direct or indirect) or any indirect or consequential damage or loss suffered by the other party that arises under or in connection with the Contract and /or these terms and conditions.
- 12.4 Subject to clauses 12.1, 12.2 and 12.3:
 - 12.4.1 the Seller's total liability to the Buyer; and
 - 12.4.2 the Buyer's total liability to the Sellerarising under or in connection with any Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited in each case to the Price paid or payable under such Contract.

13. Termination and Obligations on Termination

- 13.1 Without affecting any other right or remedy available to it, either party may terminate a Contract with immediate effect by giving written notice to the other party if:
 - 13.1.1 the other party fails to pay any undisputed amount due under a Contract on the due date for payment and remains in default not less than 10 Business Days after being notified in Writing to make such payment;
 - 13.1.2 the other party commits a material breach of any other term of a Contract and that breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so;

- 13.1.3 the other party repeatedly breaches any of the terms of a Contract in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of that Contract;
- 13.1.4 the other party suffers an Insolvency Event (and where the Buyer suffers an Insolvency Event then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary).
- 13.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under any Contract between the Seller and the Buyer if the Buyer becomes, or the Seller reasonably believes that the Buyer is about to become, subject to an Insolvency Event, or if the Customer fails to pay any amount due under any Contract on the due date for payment.
- 13.3 On termination or expiry of any Contract all sums due and owing from the Buyer to the Seller under such Contract shall become immediately payable.

14. **Force Majeure**

Neither party shall be in breach of a Contract nor liable for delay in performing or failure to perform, any of its obligations under a Contract if such delay or failure result from a Force Majeure Event. 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 4 weeks, the party not affected may terminate the Contract by giving 14 days' notice in Writing to the affected party.

15. **Export terms**

- 15.1 In these Conditions 'Incoterms' means the international rules for 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 these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 15.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 15 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 15.3 The Buyer shall be responsible for complying with any legislation or regulations (including the obtaining of any relevant licences) governing the importation of the Goods into the country of destination and for the payment of any duties thereon and shall indemnify the Seller against any loss suffered by the Seller as a result of the Buyer's failure to so comply or pay.
- 15.4 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered ex works and the Seller shall be under no obligation to give notice under section 32 (3) of the Sale of Goods Act 1979.
- 15.5 Save as agreed otherwise by the Buyer and the Seller, payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank acceptable to the Seller or, if the Seller has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and Delivery to the Seller of a bill of exchange drawn on the Buyer payable at sight to the order of the Seller at such branch of HSBC Bank in England as may be specified in the bill of exchange.
- 15.6 The Buyer shall not offer the Goods for resale in any country notified by the Seller to the Buyer at or before the time the Buyer's Order is placed, or sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

16. **General**

- 16.1 A 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. Each party acknowledges that in entering into a Contract it does not rely on, and shall have no remedies for, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in that Contract.
- 16.2 The Seller is a member of the group of companies whose holding company is Solid State Plc. The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other company shall be deemed to be the act or omission of the Seller.

- 16.3 Subject to clause 16.2, no third party has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.4 No variation of a Contract shall be effective unless it is in Writing and signed by both parties (or their authorised representatives).
- 16.5 Subject to clause 16.7, any notice or other communication given to a party under or in connection with a Contract shall be in Writing and shall be:
- 16.5.1 delivered by hand or by pre-paid first-class post or other next Business Day Delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 16.5.2 sent by email to:
- (i) (Seller): sales@steatite.co.uk;
- (ii) (Buyer) to the e-mail address specified in the Order.
- 16.6 Any notice or communication shall be deemed to have been received:
- 16.6.1 if delivered by hand, at the time the notice is left at the proper address;
- 16.6.2 if sent by pre-paid first-class post or other next Business Day Delivery services, at 9.00 am on the second Business Day after posting; or
- 16.6.3 if sent if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume (and for the purposes of this clause 16.6.3 "business hours" means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt).
- 16.7 For the purposes of the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution, service is not valid if sent by email.
- 16.8 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- 16.9 On termination or expiry of a Contract the following clauses shall continue in force: 5, 6, 7, 8, 10, 11, 13, 14 and 16. Termination or expiry of a Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages for any breach of the Contract that existed at or before the date of termination or expiry.
- 16.10 If any provision or part-provision of these Conditions 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 provisions of these Conditions and if any provision or part-provision is deemed deleted under clause 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.
- 16.11 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society.
- 16.12 The Contract shall be governed by the laws of England and Wales. Subject to clause 16.11, the Seller and the Buyer irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.