

**KEPSTON LIMITED**  
**Terms and Conditions of Sale**

These conditions also apply to Goods and/or Services with Aerospace and/or Defense applications

**1. Interpretation**

In these Conditions:

- (a) "Company" means Kepston Limited and its subsidiaries  
  
"Customer" means the person firm or company with whom the Contract is made  
  
"Contract" means the contract between the Company and the Customer for the Treatment of the Goods into which these Conditions are incorporated  
  
"Quotation" means the written or oral quotation given by the Company to the Customer or to others on the Customer's behalf (if any)  
  
"Order" means the written or oral order placed by the Customer (if any)  
  
"Acknowledgment of Order" means the written acknowledgment given by the Company to the Customer whether before or after delivery of the treated Goods (if any)  
  
"Goods" means the Customer's goods supplied by the Customer to the Company for Treatment  
  
"Treatment" includes (but it is not limited to) heat treatment brazing or any other treatment or process provided by the Company to the Customer  
  
"treated Goods" means Goods after Treatment  
  
"writing" and "written" shall include email and facsimile transmission
- (b) Words and phrases defined for the purposes of or in connection with any statutory provision shall where the context so requires be construed as having the same meaning in these Conditions and 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
- (c) Unless the context otherwise requires reference to a Condition shall be construed as a reference to a Condition of these Conditions and reference to a paragraph or sub-paragraph shall be construed as reference to a paragraph or sub-paragraph of a Condition
- (d) All notices variations agreements quotations representations advice guarantees confirmations or other documents made or purportedly made by or on behalf of the Company shall only be binding on the Company if in writing and signed by a director or authorised officer or employee. At the request of the Customer the Company will verify in writing whether any named individual has the requisite authority

**2. Formation of Contract**

- (a) All Quotations Orders and Acknowledgments of Order (whether written or verbal) shall be deemed to include these conditions except insofar as they are inconsistent with any special terms or conditions agreed in writing. Any terms or conditions contained in an Order which are inconsistent with these Conditions shall not form part of the Contract unless accepted by the Company. Any oral Quotation must be confirmed in writing by the Company before it is binding on the Company
- (b) Unless previously withdrawn the Company's Quotations are only open for acceptance within 30 days from the date thereof and where given without sight of the Goods are provisional only. They are based on the rates of pay and the prices of raw materials labour gases and other factors current at the date of Quotation and the Company reserves the right to make an additional charge to cover any additional expense incurred by it as a result of any increase in such rates or prices or any change in other factors.
- (c) The Customer acknowledges that save in the circumstances provided for in Condition 1(d) no representation whether oral or in writing has been made by any of the Company's agents representatives or employees which has led the Customer to enter into the Contract
- (d) The Company has the right to amend any Quotation or decline to accept Goods for Treatment or to cancel any Contract after examination of samples of the Goods in bulk
- (e) If the Company has provided a Quotation by reference to a set price per unit of weight for a particular Treatment then that set price shall apply to any subsequent Orders placed by that specific Customer until such time as such Customer is notified by the Company of a variation in such price.
- (f) Where the Quotation contains documents and particulars produced by the Company including (without prejudice to the generality of the foregoing) illustrations designs drawings and weight and technical specifications and ratings such documents and particulars shall be deemed to be approximate only unless a statement to the effect that they are final and definitive is expressly made. The Customer undertakes to observe strict secrecy with such documents and particulars and not to disclose them to others and the Company reserves all rights to copyright design rights and all other intellectual or industrial property rights therein including the ownership of the actual documents submitted
- (g) Cancellation of the Contract by the Customer will be a breach of contract entitling the Company to compensation and the Customer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses paid incurred or sustained by the Company as a result of the cancellation
- (h) The Company will carry out the Treatment with reasonable skill and care. This warranty shall be the only warranty given in respect of such obligations. All other conditions and warranties express or implied by statute common law or otherwise are hereby excluded save where they are not or to the extent that they may not be capable of exclusion either wholly in part or to a certain extent. No obligation whatsoever on the part of the Company shall arise in the event of the Customer being in breach of its warranties contained in condition 3(h)(i) or otherwise in breach of its obligations to the Company
- (i) The Company shall not in any event be liable for any breach of the warranty given in sub-paragraph (h) above or for any damage to or loss of Goods as a result of processing by the Company unless the methods employed by the Customer in manufacturing the Goods prior to processing pursuant to the Contract have taken into account the current state of knowledge in the heat treatment industry and the Customer has ensured that the Goods are made from the correct material and designed to appropriate engineering standards with final machining allowances and full information concerning the Goods as described in condition 3(h)(i) has been supplied to the Company before the commencement of Treatment
- (j) The employees of the Company are not authorised to make oral representations or otherwise as to the skill and care which will be used by the Company in the provision of the Treatment or as to the quality or fitness for Treatment of any Goods. If a representation is made or an opinion expressed orally which materially affects the Customer's decision to place an order for Treatment the Customer must ensure that such details are confirmed by the Company so as to form part of the Contract; otherwise no liability can be accepted

- (k) With the Order the Customer shall submit to the Company all information specifications drawings and technical descriptions necessary to enable the Company to provide the Treatment and the Customer alone shall be responsible for the accuracy of such information specifications drawings and technical descriptions and their suitability to the Goods. The Company reserves the right not to commence Treatment until it shall be in receipt of any such information specifications drawings and technical descriptions which it shall deem necessary for such purpose
- (l) (i) Unless otherwise agreed by the Company the Customer shall deliver the Goods to the premises of the Company at which the Treatment is to take place and shall be solely responsible for the costs and risks thereof. Goods despatched by the Customer to the Company for Treatment should be suitably packaged having regard inter alia but not limited to their manufacturing tolerances quality and value to the Customer weather conditions impact damage and other transport risks in materials which can be reused where appropriate by the Company for delivery of treated Goods. Where such materials are not reusable or in the opinion of the Company deemed inadequate for packing treated Goods the Company will pack treated Goods as it deems appropriate and any additional costs so incurred shall be charged to the Customer. The Company does not accept responsibility for any pallets cases cartons or other such materials delivered with the Goods although wherever possible will endeavour to return the same
- (ii) In the event that the Goods are transported by the Company's vehicles then insurance during such transportation (but not covering loading or unloading of the Goods) will be provided by the Company. Any liability of the Company in respect of loss or damage to Goods in transit in respect of which the Company has effected insurance shall not exceed the amount (if any) paid to the Company under such insurance policy. Details of the present limit under the Company's inland transit insurance can be supplied upon request. The obligations of the Customer set out in sub-paragraph (i) of this sub-paragraph relating to packaging shall apply
- (m) The Company will not be liable for any loss or damage to Goods for which the Company is not insured
- (n) The Company and the Customer acknowledge that the terms and conditions herein have been given due consideration and that they have been considered fair and reasonable by both parties

### 3. Prices and Payment

- (a) Unless otherwise stated in the Quotation all prices quoted are the price of the Treatment (excluding VAT) ex-works and do not include packaging or insurance (save any insurance provided pursuant to condition 2(i)(ii) above) nor the cost of rectification of the Goods. The Customer shall be responsible for any additional costs arising from part deliveries or express dispatch
- (b) All prices are quoted and payable in pounds sterling
- (c) All invoices fall due for payment in pounds sterling on the last day of the month following that of the date of the invoice. The time of payment of the price shall be of the essence of the Contract
- (d) For the purpose of calculating rates of interest a payment shall be deemed to have been received by the Company when the same is irrevocably and unconditionally credited to the Company's bank account. Any costs of clearing or discounting cheques bills of exchange bank giro payments or any other negotiable instruments shall be payable by the Customer
- (e) The Company will not be liable to pay interest on any payment made by the Customer before the same becomes due but without prejudice to its rights to claim damages the Company shall be entitled (without any prior notification) to charge interest (with monthly rests) at the rate of four per cent above Barclays Bank plc Base Lending Rate for the time being in force on any sums which remain unpaid after the same shall become due
- (f) If the Company shall notify the Customer of completion of the Treatment of part of the Goods payment of such part of the price as relates to the completed part of the Treatment shall become due and payable forthwith notwithstanding that the remainder of the Treatment shall not have been completed
- (g) The Customer shall not be entitled to withhold payment of any amount payable under the Contract because of any disputed claim of the Customer in respect of faulty Treatment or any other alleged breach of contract nor shall the Customer be entitled to set off against any amount payable under the Contract to the Company any monies which are not then presently payable by the Company or for which the Company disputes liability
- (h) The Customer will pay to the Company all additional costs charges and expenses and any consequential loss which the Company incurs or sustains as a direct or indirect result in respect of or otherwise connected with the following: -
  - (i) if the Customer does not indicate to the Company plainly and correctly the type of Goods (including the make brand and grade of Goods to which Treatment is to be applied) and fails to give to the Company correct and complete instructions as to the processing required
  - (ii) any variation agreed between the parties
  - (iii) any variation delay or suspension of the Contract arising from any act or omission of the Customer or any employee agent or contractor of the Customer or
  - (iv) by reason of any other circumstances for which the Company is not wholly responsible
- (i) The Company shall be entitled to appropriate as it thinks fit any payment received from the Customer to any debt outstanding in respect of the Contract or any other contract between the Company and the Customer notwithstanding any purported appropriation by the Customer to the contrary

### 4. Cancellation and Suspension of the Contract

- (a) This Condition applies if: -
  - (i) any sum which is due and payable by the Customer to the Company whether under the Contract or otherwise remains unpaid for a period of seven days or
  - (ii) the Customer fails to take delivery of any Goods under any contract between the Customer and the Company otherwise than in accordance with the Customer's contractual rights or
  - (iii) the Customer fails to supply the Company with instructions for despatch of the treated Goods within 7 days of notice being given to the Customer that the same are ready for despatch or
  - (iv) the Customer commits any breach of Contract which is incapable of remedy or which if the same be capable of remedy it fails to remedy within 14 days of the Company's written notice so to do or
  - (v) unforeseen events including (without prejudice to the generality thereof) those referred to in Condition 5(f) materially affect the commercial effect of the Contract or

- (vi) if any distress or execution shall be levied on the Customer's assets or if the Customer (being an individual) or any one of them if more than one shall make an offer to make any arrangement or composition with any one or more of his creditors or has an interim or final bankruptcy order made against him or becomes subject to any voluntary arrangement or is sequestered or if the Customer (being a limited company) goes into administration or liquidation (other than for the purposes of reconstruction or amalgamation) or has a receiver or administrative receiver appointed over all or any of its assets or is deemed under Section 123 of the Insolvency Act 1986 to be unable to pay its debts or
  - (vii) the Customer ceases or threatens to cease to carry on business or
  - (viii) the Company reasonably apprehends that any of the events mentioned in sub-paragraphs (vi) or (vii) hereof is about to occur in relation to the Customer and notifies the Customer accordingly or
  - (ix) in the reasonable opinion of the Company the credit rating of the Customer is reduced or
  - (x) and to the extent that the value of the Goods delivered but not paid for exceeds or if delivered would exceed the Customer's credit limit whether or not advised to the Customer and whether or not payment is overdue or
  - (xi) if the Company receives notice of any claim alleging that the Goods or any part thereof or any Treatment applied to the Goods infringe any patent copyright design right trade mark or other industrial or intellectual property rights of any other person or
  - (xii) the Customer fails to provide any letter of credit bill of exchange or other security required by the Contract
- (b) If this Condition applies then without prejudice to any other right or remedy available to the Company the Company shall be entitled to cancel the Contract or suspend any further deliveries or make partial deliveries under the Contract without any liability to the Company and if the treated 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
  - (c) Notwithstanding any such termination or suspension in accordance with paragraph (b) above the Customer shall pay the Company at the Contract rate for all work done (including all costs of transportation) and materials used up to and including the date of suspension or termination and shall in addition indemnify the Company against any resulting loss damage or expense incurred by the Company in connection with the non-performance of the Contract including the cost of any material plant or tools used or intended to be used therefor and the cost of labour and other overheads including a percentage in respect of profit
  - (d) The Customer cannot cancel the Contract without the written consent of the Company
  - (e) Should the Customer delay postpone call off or cancel its Order or purport to do so then the Company shall be entitled to payment for work already carried out and the materials especially ordered to comply with the original Order

## 5. Delivery

- (a) Delivery of the treated Goods shall be made by the Customer collecting the treated Goods at the Company's premises at any time after the Company has notified the Customer that the treated Goods are ready for collection or if some other place for delivery is agreed by the Company by the Company delivering the treated Goods to that place
- (b) Any dates quoted for delivery of the treated Goods are approximate and are given for information only and shall under no circumstances be essential terms. A delay in delivery including delivering later than the date or dates provided in the Contract shall not constitute a breach of contract and shall not entitle the Customer to avoid the Contract or to any other remedy unless the Company has guaranteed the date of delivery in a written warranty which expressly modifies the provision of this Condition
- (c) If the Goods are not received within seven days after the receipt of the relevant invoice by the Customer then the Company must be notified immediately
- (d) In any case where the Company has agreed in writing to both a guaranteed delivery date and an agreed daily sum by way of pre-estimated damages for failure to deliver in accordance with the Contract the Company's liability shall be limited to the agreed daily sum. In any other case the extent of the Company's liability shall be as stated in Condition 9
- (e) Where the treated Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated
- (f) The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Company's reasonable control. In such circumstances the Company shall be entitled at its absolute discretion partially or totally to suspend performance of the Contract for a period equal to the delay caused by such events or to terminate the Contract. If the delivery period is extended as a result of such suspension by more than three months the Contract may be terminated as regards any Goods then undelivered by either party by written notice to the other but such termination shall be without prejudice to the Company's rights to require the Customer to take delivery and to pay for the treatment of such Goods as are or may be available for delivery and to pay at the Contract rate for all work done to (including all costs of transportation) and materials used for the Goods in respect of which the Contract has not been completed by the Company up to the date of service of the said notice and the Customer shall indemnify the Company against any resulting loss damage or expense incurred by the Company in connection with the non-performance of the Contract including the cost of any material plant or tools used or intended to be used therefor and the cost of labour and other overheads including a percentage in respect of profit and without prejudice to any rights which may have accrued to either party prior to the date of such termination. Furthermore if the Company is unable to meet the demands of all its Customers as a result of any such event the Company may allocate the available capacity for processing Goods among such Customers as the Company in its absolute discretion considers fit and without incurring any liability whatsoever to any Customers of the Company. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Company's reasonable control: -
  - (i) acts of God explosion flood tempest fire or other severe weather conditions or accident
  - (ii) war or threat of war sabotage insurrection civil disturbance or requisition
  - (iii) acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority
  - (iv) import or export regulations or embargoes
  - (v) strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party)
  - (vi) difficulties in obtaining raw materials labour fuel parts or machinery
  - (vii) power failure or breakdown in machinery
  - (viii) interruption or reduction in communications or means of transport
  - (ix) any other cause beyond the Company's control

- (g) If the Customer fails to take delivery of the treated Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Company the Company may: -
  - (i) arrange storage either at its works or at its option elsewhere on the Customer's behalf and all charges for storage insurance or demurrage shall be payable by the Customer or
  - (ii) sell the treated Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract
- (h) The Company shall be permitted to deliver the treated Goods (or any part thereof) before the delivery date
- (i) Subject to the provisions of sub-paragraph (g) the Company shall have a general lien on all goods and property belonging to the Customer and such lien shall be exercisable in respect of all sums lawfully due from the Customer to the Company. The Company shall be entitled on the expiration of fourteen days' notice to dispose of such goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards such debt
- (j) The Company may store all or any part of the treated Goods at locations other than the Company's premises

## 6. Risk

- (a) Goods are and remain at all times whilst at the Company's works at the entire risk of the Customer who shall be responsible for effecting and maintaining its own insurance cover in relation thereto it being hereby acknowledged by the Customer that the charges of the Company do not include insurance other than insurance during transportation (if any) as referred to in paragraph 2(i)(ii) above hereof and as limited therein. The Customer will hold on trust for the Company the proceeds of any insurance claim made by the Customer in respect of loss of or damage to the Goods to the extent of any liability of the Company to the Customer pursuant to paragraph 2(h) above or otherwise and will pay an amount equal to such liability to the Company forthwith upon demand
- (b) Where the Contract provides for delivery of the treated Goods elsewhere than at the Company's premises the Company will entertain a claim by the Customer in respect of loss or damage in transit only if the Customer: -
  - (i) gives written notice to the Company within 14 days after the date of the Company's advice note or other notification of the despatch of the treated Goods in the case of non-delivery or within seven working days of the delivery of the treated Goods in any other case and
  - (ii) where the treated Goods are transported by an independent freight carrier complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit
- (c) The Customer is responsible in all cases for unloading the delivery vehicle and shall be responsible for all loss of or damage to the treated Goods during the course of such unloading

## 7. Sub-Contracting

The Company may sub-contract the whole or any part of its obligations under the Contract unless specifically instructed otherwise in writing by the Customer without affecting the Company's obligations under the Contract. The Company may also store all or any part of the Goods on premises other than the Company's premises

## 8. Defects

- (a) The Company shall (subject to the provisions of clause 9(c)) be under no liability: -
  - (i) in respect of any defect in the Goods
  - (ii) in respect of any defect in the Goods or the treated Goods arising from any information drawing design or specification supplied by or on behalf of the Customer
  - (iii) in respect of any defect in the treated Goods arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow the Company's instructions (whether oral or in writing) or misuse of the treated Goods without the Company's approval
  - (iv) if the total price for the treated Goods has not been paid by the due date for payment
  - (v) and the Customer shall be deemed to have accepted the treated Goods and it shall be conclusively agreed that the Goods are in accordance with the Contract unless: -
    - (aa) the Customer gives notice in accordance with paragraph (b) or
    - (bb) within seven days after receipt of the treated Goods or (in the event that the Goods have been transported by a third party carrier at the cost of the Company) within such time as will enable the Company to comply with the carrier's conditions of carriage and prior to their use or resale the Customer serves upon the Company a written notice specifying any defect in the quality or state of the treated Goods or other respect in which the treated Goods are not in accordance with the Contract which would be apparent upon careful inspection or by such testing as it is reasonable in all the circumstances for the Customer to undertake or stating why the treated Goods are not otherwise in accordance with the Contract and thereafter provides to the Company a reasonable opportunity of inspecting and testing the treated Goods before they have been used or resold or
    - (cc) if a defect in the quality or state of the Treated Goods or other respect in which the treated Goods are not in accordance with the Contract would not be apparent upon careful inspection or reasonable testing the Customer serves upon the Company written notice of such defect or respect forthwith upon its discovery specifying the matters complained of and affording to the Company a reasonable opportunity of inspecting the treated Goods before any making good or replacement is undertaken. The Customer shall not be excused from providing such opportunity by reason of the incorporation of the treated Goods in the property of a third party or the location of the treated Goods in upon or under the premises or land of a third party
- (b) As part of the Treatment the Company will normally test a small percentage of treated Goods for conformity with the Customer's specification. Where the Contract provides for testing or inspection of the treated Goods by or on behalf of the Customer before delivery whether at the Company's premises or elsewhere then upon the Company giving notice of the availability of the treated Goods for inspection/testing the Customer shall inspect and/or test the treated Goods within seven days of such notice. If the Customer does not inspect or test the treated Goods within the time specified or if within seven days of such testing or inspection the Customer does not notify the Company in writing that the treated Goods are not in accordance with the Contract specifying the matters complained of then the Customer shall conclusively be deemed to have accepted the treated Goods as being in accordance with the Contract and shall not thereafter be entitled to reject the treated Goods on the grounds of anything which such testing or inspection has or would have revealed
- (c) In the event that the Customer serves written notice on the Company pursuant to sub-paragraph (b) above the Customer shall afford to the Company reasonable opportunity to inspect the treated Goods which are the subject of the written notice and if so requested by the Company the Customer will return such treated Goods to the Company's premises at the Customer's expense to enable the Company to carry out such inspection

- (d) If the treated Goods referred to in any written notice served by the Customer pursuant to sub-paragraph (b) are found by the Company to be faulty as a result of Treatment or damaged as a result of the acts of omissions of the Company or its employees or agents ("the defective treated Goods") the Company will at its option and subject always to the provisions of Condition 9(c): -
- (i) repeat the Treatment or any part of it or take such other steps as the Company considers necessary or
  - (ii) credit the Customer with the appropriate part of the cost of faulty Treatment or damage to the defective treated Goods and
  - (iii) the reasonable cost of returning the defective treated Goods to the Company's premises

## 9. Liability

- (a) The Customer expressly holds itself out as making the Contract in the course of a business
- (b) Except as expressly provided in these Conditions all warranties statements terms and conditions or undertakings which may be implied by statute common law custom of the trade or otherwise are hereby excluded
- (c) The Company does not exclude liability for: -
- (i) death or personal injury resulting from its negligence or that of its employees
  - (ii) direct physical damage to or physical loss of the property of the Customer resulting from the Company's its employees' or agents' negligent acts or omissions and which arise out of the performance of its obligations under the Contract
- provided that the Company's liability under this sub-paragraph (c)(ii) shall not exceed the lesser of £500 or three times the Contract price in aggregate in respect of any one event or series of events
- (d) Subject to sub-paragraph (c) the Company will not be liable to the Customer for any: -
- (i) direct loss damage or injury and/or
  - (ii) indirect consequential or special loss damage or injury (including but without limitation financial loss loss of profits loss of business or contracts loss of operating time or loss of use)
- whether foreseeable or not to the Customer or to the Customer's property howsoever whensoever or wheresoever arising whether by reason of any representation or any implied warranty condition or other term or duty at common law or under statute or under the express terms of the Contract (and whether caused by the negligence of the Company or otherwise) or otherwise in respect of or in connection with the Treatment of the Goods or their use or resale by the Customer except as expressly provided in these Conditions
- (e) The weight or quantity of the treated Goods printed upon the Company's advice/despatch note shall be final unless the Customer shall have given written notice of any discrepancy in weight or quantity within seven days after receipt of the treated Goods and has thereafter given the Company a reasonable opportunity of witnessing a verification of the treated Goods before they have been used processed or sold provided always that the Customer acknowledges and accepts there shall be excluded losses of 3% of the Goods from the weight or quantity of treated Goods (being the norm in the industry for losses during Treatment of Goods)
- (f) In the event that the Customer requires cover in respect of loss or damage not otherwise provided for in these Conditions such requirements shall be notified to the Company and the Company will endeavour to submit a revised Quotation incorporating such requirements.
- (g) The Company is concerned to ensure that the price of Treatment remains competitive and taking into account: -
- (i) the fact that the Customer is in a better position than the Company to know or ascertain the amount of any loss which will arise out of any defect in the treated Goods
  - (ii) the fact that the extent of the damage that might be caused or alleged to be caused to the Customer or to the Goods is disproportionate to the amount that can reasonably be charged (and is charged) by the Company to the Customer for the Treatment
  - (iii) the terms and conditions upon which the Company's own suppliers are prepared to supply goods and services to the Company  
this must necessarily involve the incorporation of the terms and conditions set out in this Condition 9

## 10. Acknowledgment

- (a) The Customer acknowledges and accepts that Treatment carries risks to the Goods including but not limited to cracking distortion failure to respond segregation hardenability and sharp corners dependent upon such factors as manufacturing history size and sections for which the Customer accepts full responsibility and the Customer enters into the Contract on such basis
- (b) Accordingly the Customer shall be responsible for ensuring that the Goods are suitable for Treatment. If prior to or at any time during Treatment the Company forms the opinion in its absolute discretion that the Goods are unsuitable for Treatment or for the continuation of Treatment (as the case may be) the Company shall be entitled to discontinue Treatment forthwith and will notify the Customer as soon as reasonably practicable. The Company will invoice the Customer for costs incurred and Treatment actually carried out and Condition 3 shall otherwise apply to payment as if Treatment had been completed. Unless otherwise agreed in writing by the Company the Customer shall collect the Goods at its own risk and expense from the Company's premises. Collection of the Goods shall take place within 14 days of receipt of notification from the Company that the Goods are unsuitable for Treatment in the absence of which the Company may at its election apply the provisions of Condition 5(g)(i) and (ii) as if they referred to the Goods
- (c) Save as provided by Condition 2(j) any advice as to Treatment given by the Company will be on the basis of information specifications drawings and technical descriptions provided by the Customer and will be subject to the provisions of Condition 11(a) and as otherwise provided in these Conditions

## 11. Indemnity

- (a) The Customer shall indemnify and keep the Company indemnified from and against any liability of any kind to any third party howsoever arising (whether in contract tort or otherwise and including but not limited to liability arising from the negligence of the Company or from the negligence of any person for whom the Company is vicariously liable) in respect of or in connection with: -
- (i) any defect in the Goods and/or
  - (ii) any inadequate or inaccurate instructions information specifications drawings or technical descriptions given by the Customer its employees or agents relating to the Treatment of the Goods and/or

- (iii) any defect in the Customer's title to the Goods or authority to contract with the Company for Treatment of the Goods and/or
  - (iv) any loss injury or damage of any kind (whether direct indirect or otherwise and including but not limited to any loss of profit and/or any incidental consequential or special loss or damage of any description) arising out of in respect of or in connection with the supply of the treated Goods or their use or resale and/or
  - (v) any losses claims demands or damages incurred by the Company exceeding the Company's liability pursuant to these Conditions
- (b) The Customer shall indemnify the Company against all losses damages costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent copyright design trademark or other industrial or intellectual property rights of any person which results from the Company's use of the Customer's design drawing specification tooling or goods (including but not limited to the Goods)

**12. Waiver**

The rights of the Company or the Customer shall not be prejudiced or restricted by any indulgence or forbearance by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach

**13. Severance**

In the event of any of the words provisions terms and/or Conditions herein contained being unenforceable or void for any reason whatsoever each word provision term of Condition (including any paragraph or sub-paragraph herein contained) shall be deemed to be severable from the remaining words provisions terms or Conditions and such remaining words provisions terms or Conditions shall remain in full force and effect

**14. Notices**

Notices to be served hereunder shall be sent by post email or facsimile to either party at its last known address. Notices shall be deemed served by post two working days after posting and by email or facsimile when either is received

**15. Proper Law**

The Contract shall be deemed to be made in England and the construction validity and performance of the Contract shall be interpreted in all respects by the law of England

**16. Headings**

The headings to these Conditions are for convenience only and shall not affect their construction