

## Ellard Limited Terms and Conditions of Sale

### 1. INTERPRETATION

1.1 The following words and expressions have the following meanings in these Conditions.

<b>"Bespoke Products"</b>	as defined in Condition 18.1;
<b>"Buyer"</b>	the person, firm or company who purchases the Goods from the Company;
<b>"Company"</b>	Ellard Limited (registered number 04036325) whose registered office is situated at Ellard House, Floats Road, Manchester M23 9WB;
<b>"Condition"</b>	A condition as set out in this document;
<b>"Consignment Stock"</b>	As defined in Condition 19.1;
<b>"Consignment Stock Arrangement"</b>	As defined in Condition 19.2;
<b>"Contract"</b>	Any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Conditions;
<b>"Delivery Point"</b>	The place where delivery of the Goods is to take place under Condition 4;
<b>"Goods"</b>	Any goods and / or services agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them);
<b>"Intellectual Property"</b>	As defined in Condition 17.3;
<b>"Monthly Usage"</b>	As defined in Condition 19.3;
<b>"Parties"</b>	The Buyer and the Company.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 The singular includes the plural and vice versa.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings are for ease of reference only.

### 2. APPLICATION OF TERMS

2.1 The Contract comprises the quotation or the order acknowledgement (as applicable) and these Conditions.

2.2 Subject to any variation under Condition 2.3 the Contract shall be on these Conditions to the exclusion of any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document, agreement or arrangement.

2.3 These Conditions apply to all the Company's sales of Goods and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a duly authorised representative of the Company.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

- 2.6.** The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate. Any failure so to do will allow the Company to charge the Buyer an additional price for any delay or additional work necessary, or to terminate the Contract immediately.
- 2.7.** Any quotation is given on the basis that no Contract shall come into existence until either the Company despatches an acknowledgement of order to the Buyer or delivers the product whichever is the earlier. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

### **3. DESCRIPTION**

- 3.1.** The quantity, quality and description of and any specifications for the Goods shall be as set out in the Company's quotation or order or acknowledgement of order.
- 3.2.** All samples, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract unless specifically so incorporated in writing by the Company.
- 3.3.** Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed. The Buyer confirms to the Company that it has not relied on, nor been induced to enter into the Contract by, any representation, warranty, statement or promise not recorded in writing in the Contract.
- 3.4.** Nothing in Condition 3.3 excludes any liability for fraudulent misrepresentations.

### **4. DELIVERY**

Delivery of the Goods shall occur at the place specified in the quotation, purchase order or acknowledgement of Order. An invoice shall be raised and dated at the time of the delivery of the Goods and shall follow the Goods. If it has been agreed that the Buyer will take delivery of the Goods from the Company by collection from the Company's premises the Buyer must take delivery of the Goods as soon as possible, but in any event within 3 days of either the agreed date and time of collection, or the Company, giving it notice that the Goods are ready for collection.

Failure to do so will entitle the Company to levy insurance and storage charges (in addition to the price of the Goods) at its then prevailing rates until the Goods have been collected from its premises by the Buyer.

- 4.1.** Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.2.** Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of anticipated profits, loss of business, depletion of goodwill, loss of revenue, business interruption, loss of data,) costs, damages, charges, claims, fines, penalties, interest or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence).
- 4.3.** If the Goods are to be delivered to the Buyer's premises (or as the Buyer directs), then the Buyer shall provide, at the Delivery Point, and at its expense adequate and appropriate equipment and manual labour for the offloading of the Goods. If the Goods are delivered at the Company's premises, the Company shall provide the necessary equipment and labour to load the Goods.
- 4.4.** The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.5.** Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

### **5. NON-DELIVERY**

- 5.1.** The Buyer is required to acknowledge receipt of all Goods by signing the delivery note supplied by the Company or its agents, at the time of delivery. The Buyer (or its agent) is responsible for checking that the Goods actually delivered correspond with the Goods specified on the delivery note. Signature of the delivery note by the Buyer (or its agents) shall be deemed to be conclusive proof that the Goods were delivered in accordance with the delivery note, and the Buyer shall be bound to pay the price as for Goods, as if the Goods had been delivered in accordance with the Contract.

- 5.2.** In the event that a delivery note has not been signed the Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received. Time of notification shall be of the essence.
- 5.3.** Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## **6. REFUNDS POLICY**

Provided the Goods are not Bespoke Products the Buyer may cancel its order within 7 days of the date of delivery provided the Goods are returned to the Company in new condition with all original packaging. The Company will refund any payments received in respect of the Goods less a restocking charge of the maximum of 30% of the value of the Goods or £25, whichever is the greater. Additional costs may be charged to the Buyer in the event that the Goods are not returned in an original condition.

## **7. RISK/TITLE**

- 7.1.** The Goods are at the risk of the Buyer from the time of delivery.
- 7.2.** Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cleared funds) all sums due to it in respect of:
- 7.2.1.** The Goods; and
- 7.2.2.** All other sums, which are or which become due to the Company from the Buyer on any account.
- 7.3.** Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 7.3.1.** Hold the Goods on a fiduciary basis as the Company's bailee;
- 7.3.2.** Store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such away that they remain readily identifiable as the Company's property;
- 7.3.3.** Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 7.3.4.** Maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

Until such time as the title to the Goods passes to the Buyer, the Buyer shall be entitled to sell or use the Goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds, stored, protected and insured. Any Goods may be detached or removed from the Buyer's premises by the Company or its agents in Condition 7.5 being applicable.

- 7.4.** If the Buyer is or becomes insolvent, or makes or proposes to make any arrangement or composition with its creditors, or has any receiver, administrative receiver or manager appointed in respect of any of its assets, or if any other steps are taken for the winding up of the Buyer, or if the Buyer shall be in breach of any of the terms of this Contract, then all monies owed by the Buyer to the Company, whether under this Contract or otherwise, shall become immediately due and payable and the Buyer grants to the Company, or its agents, an irrevocable licence to enter upon the Buyer's premises without notice to recover and/or resell such Goods as the Company may deem necessary to recover all sums owing to it by the Buyer, together with any reasonable costs of the Company so incurred. If the Goods are not situated at the Buyer's premises, but at the premises of a third party with whom the Buyer has contracted, then the Buyer shall procure that the Company (or its agents) is granted rights of access to that third party's premises, and shall be permitted to remove the Goods from those premises. To facilitate this right, the Buyer (by entering into the Contract) irrevocably authorises the Company (or its agents) to act as its attorney when dealing with any such third party. This right shall continue to subsist notwithstanding the termination of the Contract through the happening of any the events specified in these Conditions or otherwise and without prejudice to any accrued rights of the Company under the Contract.
- 7.5.** If Condition 7.2 is held to be invalid to reserve the Company's title to Goods delivered under this Contract by reason of the reservation of title until all Goods delivered to the Buyer by the Company have been paid for, then nevertheless ownership of the Goods delivered under this Contract shall remain with the Company until those Goods themselves have been paid for.
- 7.6.** The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so, all monies owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) become immediately due and payable.
- 7.7.** Notwithstanding the provisions of section 49(1) of the sale of Goods Act 1979 and Conditions 7.2 to 7.6 the Company may bring an action for the price at any time after the price of the Goods has become payable under these Conditions.

**7.8.** On termination of the Contract, howsoever caused, the Company's rights contained in this Condition 7 shall remain in effect.

## **8. PRICE**

**8.1.** Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery, or as per the Customer specific price list published on the date of delivery or deemed delivery.

**8.2.** The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

**8.3.** The Company reserves the right, at its option, to require payment of the price in full or in part, or the payment of a nonrefundable deposit, prior to despatch of the Goods, and reserves the right to withhold delivery of the Goods or any part of them until such payment is received.

**8.4.** The Company reserves the right, by giving notice in writing to the Buyer at any time prior to completion of the Contract, to increase the price to reflect any increase in cost to the Company in executing the Contract due to any factor beyond the control of the Company (including, without limitation, any act of God, fire, flood, inclement weather, act of terrorism, war, fuel shortage, power failure, strikes or industrial action, any increase in the cost of labour, raw materials or overheads, currency fluctuations, any change in delivery dates, quantities or specifications for the Goods arising as a result of any error or omission or changes deemed necessary by the Buyer, or any delay or interruption in the Contract not attributable to the Company).

## **9. PAYMENT**

**9.1.** Payment is due within the period specified on the invoice for the Goods.

**9.2.** Time for payment shall be of the essence.

**9.3.** No payment shall be deemed to have been received until the Company has received cleared funds.

**9.4.** All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

**9.5.** Interest on overdue invoices shall accrue from the date when payment became due from the day to day until the date of payment at a rate of 8% per annum and shall accrue at such a rate both before and after judgment. The Buyer agrees to reimburse the Company all costs and expenses (including legal costs on a full indemnity basis) incurred in the collection of an overdue account. If the Buyer fails to make any payment due to the Company on the due date, then without prejudice to any other right or remedy available to it, the Company shall be entitled to cancel the Contract so far as any Goods remain to be delivered under it or suspend any further delivery of Goods.

**9.6.** No right of set off shall exist in respect of any claims by the Buyer against the Company unless and until such claims are accepted in full by the Company in writing and the Buyer shall not be entitled to withhold all or any part of any sum which has become due for payment under the Contract.

**9.7.** If the Goods are to be delivered in instalments, then notwithstanding the provisions of Condition 9.1, the Company reserves the right to invoice the Buyer on the delivery of each instalment separately and the Buyer shall pay such invoices in accordance with these Conditions. If the Customer fails to pay any instalment of the price when due, then (without prejudice to any other right or remedy of the Company), the whole of the price for each remaining instalment of Goods shall become immediately due and payable (irrespective of the non-delivery).

## **10. QUALITY**

**10.1.** Where the Company is not the manufacturer of the Goods, the Company shall use commercial endeavours to transfer to the Buyer the benefit of any warranty or guarantee given to the Company. Any such Goods only carry the manufacturer's guarantee or warranty.

**10.2.** The Company is not responsible for the installation of the Goods or for compliance with any electrical standards relevant to the installation but warrants that (subject to the other provisions of these Conditions) on delivery, for a period of 5 years in relation to tubular motors and 12 months in relation to all other Goods from the date of delivery, the Goods shall:

**10.2.1.** Be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

**10.2.2.** Be reasonably fit for purpose; and

- 10.2.3.** Be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company.
- 10.3.** The Company shall not be liable for a breach of any of the warranties in Condition 10.2 unless:
- 10.3.1.** The Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit by the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
  - 10.3.2.** The Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at its cost for the examination to take place there.
- 10.4.** The Company shall not be liable for a breach of any of the warranties in Condition 10.2 if:
- 10.4.1.** The Buyer makes any further use of such Goods after giving such notice; or
  - 10.4.2.** The Buyer fails to provide the Company with the correct specifications for the door(s) to which the Goods relate; or
  - 10.4.3.** The defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice. In relation to tubular motors the Buyer must also provide evidence that the Goods have been correctly serviced and maintained and in relation to safety brakes it must be shown that the electrical protection switch has been connected since the date of installation; or
  - 10.4.4.** The Buyer alters or repairs such Goods without the written consent of the Company; or
  - 10.4.5.** The Goods have not been installed in their recommended environmental conditions.
- 10.5.** If the Goods do not function correctly the Buyer shall follow the Company's returns procedure set out in the Schedule at the end of these terms and conditions.
- 10.6.** Subject to Conditions 10.3, 10.4 and 10.5, if any of the Goods do not conform with any of the warranties in condition 10.2 the Company shall at its option and taking into account whether the Buyer has purchased replacement goods under Condition 16, repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate.
- 10.7.** If the Company complies with Condition 10.6 it shall have no further liability for a breach of any of the warranties in Condition 10.2 in respect of such Goods.
- 10.8.** Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 5 year or 12-month period.

## **11. LIMITATION OF LIABILITY**

- 11.1.** Subject to Condition 4, Condition 5 and Condition 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 11.1.1.** Any breach of these Conditions;
  - 11.1.2.** Any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
  - 11.1.3.** Any representation, statement, misstatement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2.** All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3.** Nothing in these Conditions excludes or limits the liability of the Company:
- 11.3.1.** For death or personal injury caused by the Company's negligence; or
  - 11.3.2.** Under section 2(3), Consumer Protection Act 1987; or
  - 11.3.3.** For any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - 11.3.4.** For fraud or fraudulent misrepresentation.
- 11.4.** Subject to Condition 11.2 and Condition 11.3 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution, misstatement or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price.

- 11.5.** Subject to Conditions 11.2, 11.3 and 11.4 the Company shall not be liable to the Buyer for any direct, indirect or consequential loss (all three of such terms include, without limitation, pure economic loss, loss of anticipated profits, loss of business, loss of revenue, business interruption, loss of data, depletion of goodwill, and any costs, damages, charges, fines, penalties, interest, claims or expenses caused directly or indirectly by the Company's actions,
- 11.6.** Inactions, breach of contract, negligence, misrepresentation, misstatement or breach of statutory duty.

## **12. ASSIGNMENT**

The Buyer cannot transfer or assign the Contract (or any of its rights or obligations made under it) without the prior written consent of the Company.

## **13. EXCUSABLE EVENTS**

The Company will make reasonable commercial efforts to honour its obligations to the Buyer. However, if the Company is unable to do so because of events or circumstances beyond its reasonable control (including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, power failure, fuel shortages, inclement weather, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials), then the Company will give the Buyer verbal or written notice of those circumstances within a reasonable time of their occurrence.

If the Company is still unable to keep its obligations to the Buyer for 90 days from the date of the Contract, then either Party may end the Contract by giving seven days' notice to the other. If that happens, the Buyer will only have to pay the outstanding charges for Goods delivered.

## **14. GENERAL**

- 14.1.** Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 14.2.** If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, void-ability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.3.** Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 14.4.** Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 14.5.** The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 14.6.** This Contract shall be governed by and construed in accordance with English law, and the Parties submit to the exclusive jurisdiction of the English courts in the interpretation of the Contract or the resolution of any dispute arising under it.

## **15. COMMUNICATIONS**

- 15.1.** Routine transmissions between the Buyer and the Company may be undertaken by e-mail to the relevant e-mail addresses supplied by each Party to the other.
- 15.2.** All communications between the Parties relating to Conditions 5.2, 6, 10.3.1, 13, 15, 16 or 19.6 about the Contract shall be in writing and delivered by hand or sent by pre-paid first-class post.
- 15.2.1.** (In case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- 15.2.2.** (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract, or such other address as shall be notified to the Company by the Buyer.
- 15.3.** Communications shall be deemed to have been received:

- 15.3.1. If sent by pre-paid first-class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 15.3.2. If delivered by hand, on the day of delivery;

15.4. Communications addressed to the Company shall be marked for the attention the Company Secretary.

## 16. RETURNS POLICY

- 16.1. If the Goods do not function correctly, the Buyer must re-consult the installation instructions sent with each product.
- 16.2. Should the Buyer still experience difficulties the Buyer must contact the Company's Customer Services Department between 9-5 Monday to Friday excluding bank holidays on 0161 945 4561.
- 16.3. The Company will try to identify the cause of the problem and, if possible, solve it.
- 16.4. If the Buyer considers the Goods to still be faulty and wishes to return them it must obtain an RMA number from the Company's Return's Department and return the Goods to the Company tagged with the number together with details of the perceived fault.
- 16.5. Subject to Condition 10.6, if the Buyer requires an immediate replacement of the Goods without first returning the Goods in accordance with Condition 16.4 it shall provide the Company with a new purchase order. The Goods will be dispatched, and the Buyer will be invoiced. The Company will contact the Buyer to arrange for collection of the alleged faulty Goods. If within 21 days from that contact date the Goods are not made available for collection the Company will not accept any claims whatsoever in relation to those Goods, the times and periods in this Condition being of the essence.

## 17. BLIND MOTOR BATTERY TERMS AND CONDITIONS

Batteries for Blind Motors and Automation accessories - 12-month manufacturer's warranty (from the point of purchase, not first use). Ellard will not be liable for any warranty claims for failure to any goods further to any of the following events:

- a. Failure to adhere to the written and/or verbal installation, storage and handling instructions/guidelines provided with the goods.
- b. This includes but is not limited to; failure to comply with the manufacturers requirement to fully charge each battery motor before first use. Subsequent re-charges to be a maximum of every 12 months thereafter to prevent battery low voltage protection mode.
- c. Modifications and/or alterations to the goods other than those intended of the goods as supplied.
- d. Defects arising from fair wear and tear – including excessive use, battery depletion after 12 months from manufacture or periods of lack of use/operation.

## 18. INTELLECTUAL PROPERTY

- 18.1. All Intellectual Property relating to the Goods remains the property of the Company (unless the Company specifically assigns such Intellectual Property to the Buyer in writing).
- 18.2. If the Buyer instructs the Company to manufacture any Goods or place any logos or other similar devices on any Goods, which infringe the Intellectual Property of any third party, then the Buyer shall be liable for such infringement and shall fully and effectively indemnify (and keep indemnified) the Company against any cost, claim, demand, fine, penalty, interest, monies, fees and expenses which the Company may suffer or incur as a result of or flowing from such infringement.
- 18.3. "Intellectual Property" means any patent, copyright, trademark, service mark, utility model, trade name, right in design, right in databases, image right, moral right, right in an invention, right relating to passing off, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply), or renewal or extension of, such rights which exist now, or which exist in the future in the United Kingdom or elsewhere in the world.

## 19. BESPOKE PRODUCTS/LOGOS

- 19.1. If the Buyer requires as part of an order that: -
  - 19.1.1. Goods be manufactured specifically for that Buyer; or

- 19.1.2.** the Company purchase products specifically for the fulfilment of that order; or
  - 19.1.3.** Goods be manufactured and/or supplied which, if not purchased by the Buyer, cannot be sold to any third party without causing the Company significant financial losses; or
  - 19.1.4.** Goods be manufactured and/or supplied incorporating or bearing the Buyer's logo, design, name or other distinctive mark (Together being "Bespoke Products"), then the provisions of Conditions 18.2 and 18.3 shall apply.
- 19.2.** The Buyer must place an order for a minimum quantity of Bespoke Products, with the Company nominating the required minimum quantity before the Contract can be formed, or any obligation on the Company in respect of such order to become binding.
- 19.3.** The Company may store any such Bespoke Products at its premises and shall despatch them (and invoice them on despatch) when so requested by the Buyer. The Company shall insure such Bespoke Products until delivery. In the event that the Buyer has not requested delivery of the entire quantity of Bespoke Products comprised in any order within three months of the date the Contract for that order was created, then the Company will issue an invoice for any items of Bespoke Products still located at its premises and shall charge the Buyer storage charges (at its then prevailing rate) in addition to the price of the Bespoke Products, for each day during which the Bespoke Products remain at the Company's premises until delivery (or collection) to (or by) the Buyer. Payment of such invoice shall be due as from the date of the invoice.

## **20. CONSIGNMENT STOCK**

- 20.1.** Any Goods delivered to the Buyer as consignment stock ("Consignment Stock") shall be governed by this Condition 19.
- 20.2.** The Company must have agreed in writing to an arrangement becomes binding ("Consignment Stock Arrangement"). The Buyer must have signed the appropriate documentation produced by the Company to evidence such Consignment Stock Arrangement.
- 20.3.** The Buyer may call off or use any Goods it requires out of the Consignment Stock as and when needed. The Buyer shall notify the Company within seven days of the end of a calendar month of the quantity of Consignment Stock used or called off in the preceding month ("Monthly Usage"). The Company shall then deliver a quantity of Goods equivalent to that Monthly Usage to the Buyer (delivery to be at such time as agreed between the Parties in that month), together with an invoice for those Goods delivered by way of replacement for the Monthly Usage. Such invoice shall be payable in accordance with the normal payment terms agreed with the Buyer. The rates charged for such Goods shall be at the Company's rates in force as at the date of the relevant invoice.
- 20.4.** The time period for all warranties given in respect of Goods forming Consignment Stock runs from the date of delivery of such Goods to the Buyer.
- 20.5.** The Buyer shall be responsible for the monitoring of in-house Consignment Stock rotation, and for correctly notifying the Company of its Monthly Usage by the end of the month of usage (and any particular Consignment Stock requirements).
- 20.6.** We will completely invoice all consignment stock after 180 days of setting it up. This stock will then become the property of the Buyer. A New Consignment stock agreement (if applicable) will then be sent governed by clause 19.
- 20.7.** The Company reserves the right for its employees or representatives to perform physical checks of goods held in consignment.
- 20.8.** Any discrepancies between Consignment Stock ordered and Consignment Stock delivered must be notified to the Company within 24 hours of delivery, and time is of the essence.
- 20.9.** The Buyer shall insure the Goods for their full value and shall either produce evidence of such invoice to the Company, or proof that the Company's interests have been noted on the Buyer's insurance policy. All proceeds received from any such insurance policies in respect of Consignment Stock shall be held on trust for the Company by the Buyer and shall be payable to the Company by the Buyer on demand.
- 20.10.** Failure to pay invoices for Goods forming part of the Consignment Stock Arrangement contemplated by this Condition in accordance with the payment terms agreed with the Company shall entitle the Company (at its discretion) to terminate the Consignment Stock Arrangement immediately by written notice.
- 20.11.** The Company may (at its sole discretion) terminate the Consignment Stock Arrangement, or may remove any Consignment Stock from the Buyer's premises, at any time by giving written notice to the Buyer. The Buyer may terminate the Consignment Stock Arrangement by giving 30 days' written notice to the Company.



**20.12.** On termination of the Consignment Stock Arrangement (howsoever arising), the Company shall present an invoice to the Buyer in respect of the Consignment Stock (with the rates for such invoice being the rates in force at the date of termination). Such final invoice shall be due for payment on presentation.

**20.13.** For the avoidance of doubt, all other Conditions set out in this document (including, without limitation, and by way of example only, Conditions 7, 9, 10, 11 and 15) shall apply to the Consignment Stock Arrangement.

## **21. CORRESPONDENCE BY E-MAIL**

Whilst the Company has taken all reasonable precautions in the scanning of e-mails and attachments prior to leaving the Company's network, the Company cannot accept liability for any direct, special, indirect or consequential loss (all three of such terms include, without limitation, loss of profit, loss of expected future business, loss of revenue, business interruption, loss of data, damages, costs, fines, penalties, interest, or expenses payable to a third party) arising from the alteration of the contents of any e-mail or attachment, or as a result of any virus being passed on. It is the Buyer's responsibility to take all prudent safeguards in relation to the prevention of corruption of its systems by viruses.

## **22. PRIVACY**

The Company takes your privacy very seriously. Details of the Companies Data protection policy including details on what data we hold, why, how we process it, how long we retain that data and your rights relating to that data are detailed in the Ellard General Privacy policy. This can be found on the Ellard website [www.ellard.co.uk](http://www.ellard.co.uk). These policies are non-contractual and may be amended at the Company's discretion