



WOODWAY ENGINEERING LIMITED

TERMS AND CONDITIONS OF SUPPLY



S O L I C I T O R S

BUSINESS SERVICES DEPARTMENT
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1. DEFINITIONS AND INTERPRETATION

In these standard terms and conditions:

1.1 the following words and expressions shall have the following meanings:

"Acknowledgement of Order"	The document issued by the Company which acknowledges and accepts the Buyer's requirement for Goods and/or Services.
"Applicable Law"	any: <ul style="list-style-type: none">(a) statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal);(b) rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or(c) industry code of conduct or guideline; which relates to the Contract and/or the Goods.
"Business Day"	a day other than a Saturday or Sunday or a day which is a public or bank holiday in England.
"Buyer"	the person whose order for the Goods and/or Services is accepted by the Company in accordance with condition 2.2.
"Company"	Woodway Engineering Limited (registered in England and Wales with company number 01094189).
"Confidential Information"	all information in respect of the business of the Company including know-how and other matters connected with the Goods and/or Services, information concerning the Company's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Company and of such persons and any other information which, if disclosed, will be liable to cause harm to the Company.
"Contract"	the contract between the Company and the Buyer for the sale and purchase of the Goods and/or the supply of the Services formed in accordance with condition 2 and incorporating any Special Conditions.
"Delivery Point"	the place where delivery of the Goods is to take place under condition 7.1.
"Force Majeure Event"	<ul style="list-style-type: none">(a) act of God;(b) war, insurrection, riot, civil commotion, act or threat of terrorism;(c) lightning, earthquake, fire, flood, storm, or extreme weather condition;(d) theft, malicious damage;(e) strike, lockout, industrial dispute (whether affecting the workforce of the Company and/or any other person);

- (f) breakdown or failure of plant or machinery;
- (g) inability to obtain essential supplies or materials;
- (h) change in Applicable Law;
- (i) any failure or default of a supplier or sub-contractor of the Company; or
- (j) any event or circumstance to the extent it is beyond the reasonable control of the Company.

"Goods"

any goods and/or services which the Company supplies to the Buyer (including any of them or any part of them) under a Contract.

"Insolvent"

the Buyer is Insolvent where it:

- (a) proposes or passes a resolution for its winding up or in the case of a limited liability partnership proposes or determines that it will be wound up (save for the purpose of a solvent reconstruction or amalgamation previously approved in writing by the Company);
- (b) is subject to an application to or order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off;
- (c) enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court;
- (d) proposes, makes or is subject to, a company voluntary arrangement or a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement under Part 26 Companies Act 2006 (save in the latter case for the purpose of a solvent reconstruction or amalgamation previously approved in writing by the Company);
- (e) (being an individual) is the subject of a bankruptcy petition or order;
- (f) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income;
- (g) ceases to trade or appears, in the reasonable opinion of the Company, to be likely to cease to trade;
- (h) is unable to pay its debts within the meaning of section 123 Insolvency Act 1986;
- (i) has any distraint, execution or other process levied or enforced on any of its property which

is not paid out, settled or discharged within 14 days; or

- (j) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction

"Intellectual Property Rights"	all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions.
"Pro-Forma Invoice"	the document issued by the Company which requests payment for the Goods and/or Services in advance of delivery or performance.
"Services"	any services which the Company provides to the Buyer (including any of them or any part of them).
"Service Point"	the place at which the Services are to be performed.
"Special Conditions"	Additional or alternative terms and conditions that may be specified in the Company's Acknowledgement of Order.
"Specification"	any specification for the Goods and/or Services, including any written descriptions or drawings, that are agreed in writing or otherwise by the Buyer and the Company.
"Terms and Conditions"	these standard terms and conditions of sale together with any special terms agreed in writing between the Buyer and the Company.

1.2 all headings are for ease of reference only and shall not affect the construction or interpretation of the Terms and Conditions;

1.3 unless the context otherwise requires:

1.3.1 references to the singular include the plural and vice versa and references to any gender include every gender;

1.3.2 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);

1.4 **references to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time; and**

- 1.5 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.

2. FORMATION AND INCORPORATION

- 2.1 Subject to any variation under condition 2.7, the Contract will be upon the Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.
- 2.2 Each order or acceptance of a quotation for Goods and/or Services will be deemed to be an offer by the Buyer to purchase Goods and/or Services upon the Terms and Conditions. The Contract is formed when the order is accepted by the Company, by way of email acknowledgement or formal written Acknowledgement of Order, as determined by the Company. No contract will come into existence until a written acknowledgement of the order is issued by the Company.
- 2.3 Any quotation is valid for a period of 30 days only from its date, provided the Company has not previously withdrawn it.
- 2.4 The Buyer must ensure that the terms of its order (including any estimated delivery date) and any applicable Specification are complete and accurate.
- 2.5 Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of the Buyer’s acceptance of the Terms and Conditions.
- 2.6 Subject to condition 7.3, the Buyer may not cancel the Contract. However, the Company may, at its sole discretion and subject to any handling fees, agree to accept a cancellation. The terms of such agreement (including but not limited to notice period and compensation payments) must be in writing. The Company may cancel the Contract at any time prior to delivery.
- 2.7 No variation to the Terms and Conditions shall be effective unless it is in writing and signed by a duly authorised representative on behalf of the Company.

3. THE GOODS AND SERVICES

- 3.1 The quantity and description of the Goods and/or Services will be as set out in the Company’s quotation, Acknowledgement of Order and agreed Specification where applicable. To the extent that the Goods are manufactured in accordance with a Specification, the description of the Goods shall be set out in drawings attached to the quotation which shall be approved in writing by the Buyer.
- 3.2 All samples, drawings, descriptive matter, Specifications and advertising issued by the Company (or the manufacturer of the Goods) and any descriptions or illustrations contained in the Company’s or manufacturer’s catalogue, brochures or websites are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services represented by or described in them. They will not form part of the Contract and this is not a sale by sample.
- 3.3 The Company may make any changes to the Specification, design, materials or finishes of the Goods and/or provision of the Services which:
- 3.3.1 are required to conform with any Applicable Laws; or
 - 3.3.2 do not materially affect their quality.
- 3.4 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages, and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal expenses suffered or incurred by the Company in connection with any claim made against the Company for actual or

alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification.

4. PRICE

4.1 The price for the Goods and/or Services will be the price set out specified in the quotation and where appropriate, Acknowledgement of Order and is exclusive of:

4.1.1 any costs of packaging and carriage of the goods; and

4.1.2 any value added tax or other applicable sales tax or duty

which will be added to the sum in question.

4.2 The cost of any pallets and returnable packaging or containers will be paid for by the Buyer in addition to the price for the Goods when the Buyer is due to pay for the Goods.

4.3 The Company will be entitled to increase the price of the Goods and/or Services following any changes in the Specification made at the request of the Buyer and agreed by the Company or to cover any extra expense as a result of the Buyer's instructions or lack of instructions, or to comply with the requirements referred to in condition 3.3.1.

5. PAYMENT

5.1 The Company may invoice the Buyer for the Services on or at any time after performance commences. Payment for the Goods must be made in advance of delivery. In addition, the Company shall be entitled to require the Buyer to pay a proportion of the price of the Goods and /or Services upon receipt of the Company's Pro-Forma Invoice specifying the required payment on account as a condition of the Company processing the order further or commencing the Services with the balance to be paid in advance of delivery of the Goods and/or completion of the Services. In all instances the currency in which the payment shall be made shall be either pounds sterling or US Dollars as specified in either the Acknowledgment of Order or the Pro-Forma Invoice to the bank account nominated by the Company.

5.2 The Company shall not be bound to deliver the Goods or complete the Services or where appropriate process the order until the Buyer has made the payments in accordance with the provisions of condition 5.1.

5.3 Time shall be of the essence in respect of the payment dates set out in conditions 4.2 and 5.1 and any dates which may be substituted for them by the agreement in writing of the parties.

5.4 No payment will be deemed to have been received until the Company has received cleared funds.

5.5 All sums payable to the Company under the Contract will become due immediately upon termination of the Contract.

5.6 All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Buyer is required by law to make any such deduction or withholding.

5.7 The Company may appropriate any payment made by the Buyer to the Company to such of the invoices for the Goods and/or Services as the Company thinks fit, despite any purported appropriation by the Buyer.

5.8 If any sum payable under the Contract is not paid when due then, without prejudice to the Company's other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at 4% per annum over

Barclays Bank plc base rate from time to time and the Company will be entitled to suspend deliveries of the Goods and/or performance of the Services until the outstanding amount has been received by the Company from the Buyer.

6. **INSTALMENTS**

- 6.1 The Company may deliver the Goods by separate instalments and/or perform any Services in stages. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract.
- 6.2 Each instalment will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Contract, instalment.

7. **DELIVERY**

- 7.1 Unless otherwise agreed in writing, delivery of the Goods will be made Ex-Works, as defined in INCOTERMS 2010, to the Company's premises.
- 7.2 Subject to any agreement to the contrary, the Buyer shall take delivery of the Goods within 7 Business days of the Company giving notice that the Goods are ready for collection. The Services will be performed at the Service Point.
- 7.3 The Company will use reasonable endeavours to deliver each of the Buyer's orders for the Goods and/or Services within the time agreed when the Buyer places an order and, if no time is agreed, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those endeavours, the Company is unable for any reason to fulfil any delivery on the specified date, the Company will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will the Company have any liability to the Buyer for direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery except as set out in this condition. Any delay in delivery will not entitle the Buyer to cancel the order unless and until the Buyer has given 10 days' written notice to the Company requiring the delivery to be made and the Company has not fulfilled the delivery within that period. If the Buyer cancels the order in accordance with this condition 7.3 then:
 - 7.3.1 the Company will refund to the Buyer any sums which the Buyer has paid to the Company in respect of that order or part of the order which has been cancelled; and
 - 7.3.2 the Buyer will be under no liability to make any further payments under condition 5.1 in respect of that order or part of the order which has been cancelled.
- 7.4 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Goods.
- 7.5 If the Buyer fails to take delivery of any of the Goods within 3 Business Days, or such other period of time as agreed between the parties, of the Company notifying the Buyer that the Goods are ready for delivery or, where applicable, to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered and/or Services to be performed on time (except solely on account of the Company's default), the Goods and/or Services will be deemed to have been delivered or performed on the due date and (without prejudice to its other rights) the Company may:
 - 7.5.1 store or arrange for storage of the Goods until actual delivery or sale in accordance with condition 7.5.2 and charge the Buyer for all related costs and expenses (including storage and insurance); and/or
 - 7.5.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any

shortfall below the price under the Contract or account to the Buyer for any excess achieved over the price under the Contract, in both cases having taken into account any charges related to the sale.

8. RISK / OWNERSHIP

- 8.1 Risk of damage to or loss of the Goods will pass to the Buyer on delivery (or deemed delivery in accordance with condition 7.5).
- 8.2 Ownership of the Goods will not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
 - 8.2.1 the Goods; and
 - 8.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 8.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
 - 8.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
 - 8.3.2 store the Goods (at no cost to the Company) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 8.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company, and will whenever requested by the Company produce a copy of the policy of insurance.
- 8.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
 - 8.4.1 any sale will be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Company accordingly; and
 - 8.4.2 any such sale will be a sale of the Company's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.
- 8.5 The Buyer's right to possession of the Goods will terminate immediately if the Buyer becomes Insolvent or if the Company serves notice to terminate the Contract.
- 8.6 The Company will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Company.
- 8.7 The Buyer grants the Company, its sub-contractors, agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 8.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 8.9 If the Buyer's right to possession of the Goods terminates in accordance with condition 8.5, the Company shall be entitled to issue the Buyer with a credit note for all or any part of the price of the Goods together with value added tax thereon.
- 8.10 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 8 will remain in effect.

9. **WARRANTY, EXCLUSION OF LIABILITY AND INDEMNITY**

Warranty

- 9.1 All Goods that are manufactured and / or supplied by the Company comprising Whelen Engineering Company Inc products ("Whelen Products") are guaranteed under Whelen's manufacturer's warranty the current version of which is appended to the Schedule to these terms as may be amended from time to time and available at www.whelen.com. The Company is an authorised repair centre for the purposes of the Whelen Products.
- 9.2 All Goods which are manufactured by the Company and are not Whelen Products are guaranteed under the terms of conditions 9.3 to 9.7 inclusive.
- 9.3 The Company will, free of charge, within a period of 24 months from the date of purchase of the Goods or performance of the Services (not to exceed 36 months from the date of manufacture or performance of the Services) which are proved to the reasonable satisfaction of the Company to be damaged or defective or in the case of Services, do not comply with the Specification due to defects in material, workmanship or design (other than a design made, furnished or specified by the Buyer), repair, or at its option replace, such defects in materials or workmanship or re-perform such Services. This obligation will not apply where:
- 9.3.1 the Goods have been improperly altered in any way whatsoever which in the Company's sole discretion is deemed to affect the intended use and service of the Goods, or have been subject to misuse or unauthorised repair;
 - 9.3.2 the Goods have been improperly installed or connected;
 - 9.3.3 the Goods have not been operated in accordance with the Company's recommendations;
 - 9.3.4 the Goods have been subjected to excessive voltages;
 - 9.3.5 component parts not supplied or manufactured by the Company have been used or substituted in the Goods;
 - 9.3.6 any maintenance requirements relating to the Goods have not been complied with;
 - 9.3.7 any instructions as to storage of the Goods have not been complied with in all respects; or
 - 9.3.8 the Buyer has failed to notify the Company of any defect or suspected defect within 7 days of the delivery where the defect should be apparent on reasonable inspection, or within 7 days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 24 months from the date of purchase.
- 9.4 The Buyer shall return Goods that the Buyer considers to be defective or damaged to the Company and the Company will deliver any repaired or replacement Goods to the Buyer at the Company's own expense.
- 9.5 Any Goods which have been replaced will belong to the Company. Any Goods that are repaired or replaced pursuant to condition 9.3 will be liable to repair or replacement under the terms specified in condition 9.3 for the unexpired portion of the 24 month period from the original date of delivery of the replaced Goods.
- 9.6 All power plugs/cigar plugs, incandescent and halogen bulbs, polycarbonate and plastic materials are not included in the Company's warranty;
- 9.7 The use of magnetic or vacuum/suction mounted warning lights on the roof or exterior of a vehicle in motion is at the sole discretion and risk of the user. The Company makes no warranties or guarantees of the Goods in this regard.

- 9.8 All other Goods which are manufactured by another party but sold by the Company are excluded from the warranties set out above.. In these circumstances, the Buyer shall be notified of the warranty in which they are entitled to rely on in writing on request.

Exclusion of Liability

- 9.9 In the event of any breach of the Company's express obligations under conditions 7.3, 9.1 to 9.8 above the remedies of the Buyer will be limited to damages. However, the Company shall not be held liable for any incidental or consequential damage and assumes no responsibility or liability for expenses incurred in the removal of faulty Goods and/or re-installation.
- 9.10 The Company does not exclude its liability (if any) to the Buyer:
- 9.10.1 for breach of the Company's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
 - 9.10.2 for personal injury or death resulting from the Company's negligence;
 - 9.10.3 under section 2(3) Consumer Protection Act 1987;
 - 9.10.4 for any matter for which it would be illegal for the Company to exclude or to attempt to exclude its liability; or
 - 9.10.5 for fraud.
- 9.11 Except as provided in conditions 7.3 and 9.1 to 9.10, the Company will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
- 9.11.1 any of the Goods and/or Services , or the manufacture of the Goods or the sale or supply, or failure or delay in supply, of the Goods and/or Services by the Company;
 - 9.11.2 any breach by the Company of any of the express or implied terms of the Contract;
 - 9.11.3 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods;
 - 9.11.4 any statement made or not made, or advice given or not given, by or on behalf of the Company
or otherwise under the Contract, and in no circumstances shall the Company's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, exceed 100% of the price of the Goods.
- 9.12 Subject to condition 9.10, all warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are, to the fullest extent excluded from the Contract, including the terms implied by sections 13 to 15 of the Sale of Goods Act 1979.
- 9.13 Each of the Company's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in conditions 7.3 and 9.9, 9.11 and 9.12 in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word Company wherever it appears in those clauses.
- 9.14 The Buyer acknowledges that the above provisions of this condition 9 are reasonable and reflected in the price which would be higher without those provisions, and the Buyer will accept such risk and/or insure accordingly.
- 9.15 The Buyer agrees to indemnify, keep indemnified and hold harmless the Company from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect and consequential loss (all three of which terms include

pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) and judgments which the Company incurs or suffers as a consequence of any direct or indirect breach by the Buyer of the terms of the Contract.

10. **FORCE MAJEURE**

- 10.1 The Company shall not be in breach of the Contract or otherwise liable to the Buyer for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event.
- 10.2 If a Force Majeure Event occurs:
- 10.2.1 the Company shall as soon as reasonably practicable after becoming aware of the Force Majeure Event notify the Buyer that the Force Majeure Event has occurred; and
 - 10.2.2 the Company shall use reasonable endeavours, without being required to incur additional expenditure, to mitigate the effects of the Force Majeure Event.
- 10.3 Subject to condition 10.4, the Buyer shall not be in breach of the Contract or otherwise liable to the Company for any failure to perform or delay in performing its obligations under the Contract to the extent that this is due to a Force Majeure Event affecting the Company.
- 10.4 The Buyer shall continue to pay the prices for any Goods and/or Services which the Company continues to supply notwithstanding the occurrence of the Force Majeure Event. If a Force Majeure Event which gives rise to relief from liability under condition 10.1 continues for a period of more than 6 weeks, either party shall be entitled to terminate the Contract immediately by giving written notice to that effect to the other party.

11. **TERMINATION**

- 11.1 If the Buyer:
- 11.1.1 commits a material breach of the Contract which cannot be remedied; or
 - 11.1.2 commits a material breach of the Contract which can be remedied but fails to remedy that breach within 30 days of a written notice setting out the breach and requiring it to be remedied being given by the Company,
- the Company may terminate the Contract immediately by giving written notice to that effect to the Buyer.
- 11.2 A material breach can be remedied if the Buyer can comply with the relevant obligation in all respects other than as to time of performance unless time of performance of such obligation is of the essence.
- 11.3 Condition 11.1 shall not apply to any failure by the Buyer to make any payment due to the Company under the Contract on or before the due date. Condition 11.5 shall apply instead to any such failure.
- 11.4 The Company may terminate the Contract immediately by giving written notice to that effect to the Buyer if:
- 11.4.1 the Buyer becomes Insolvent;
 - 11.4.2 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - 11.4.3 the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

- 11.4.4 (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 11.5 The Company may terminate the Contract immediately by giving written notice to that effect to the Buyer if the Buyer fails to make any payment due to the Company under the Contract within 14 days after the due date.
- 11.6 Following expiry or termination of the Contract:
- 11.6.1 Conditions 1, 5, 8, 9, 11, 12, 13 and 14 shall continue in force, together with any other conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract;
- 11.6.2 The Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest; and
- 11.6.3 all other rights and obligations shall immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
- 11.7 The Company will be entitled to suspend any deliveries otherwise due to occur following service of a notice specifying a breach under condition 11.1.2, until either the breach is remedied (if applicable) or the Contract terminates, whichever occurs first.

12. **INTELLECTUAL PROPERTY**

- 12.1 No right or licence is granted to the Buyer in respect of the Intellectual Property Rights of the Company, except the right to use, or re-sell the Goods or use the Services in the Buyer's ordinary course of business.
- 12.2 The Buyer will not without the Company's prior consent allow any trade marks of the Company or other words or marks applied to the Goods to be obliterated, obscured or omitted nor add any additional marks or words.

13. **CONFIDENTIALITY**

- 13.1 The Buyer will keep confidential any and all Confidential Information that it may acquire.
- 13.2 The Buyer will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Buyer will ensure that its officers and employees comply with the provisions of this condition 13.
- 13.3 The obligations on the Buyer set out in condition 13.1 and 13.2 will not apply to any information which:
- 13.3.1 is publicly available or becomes publicly available through no act or omission of the Buyer; or
- 13.3.2 the Buyer is required to disclose by order of a court of competent jurisdiction.

14. **GENERAL**

- 14.1 Time shall not be of the essence in respect of any obligation with which the Company is required to comply under the Contract.
- 14.2 The Company's rights and remedies set out in the Terms and Conditions are in addition to and not exclusive of any rights and remedies provided by law.
- 14.3 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term shall be deemed to be severed from the Contract and this shall not affect the remainder of the Contract which shall continue in full force and effect.

- 14.4 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor shall the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default shall only be valid if it is writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and shall not constitute a waiver of any other right, remedy, breach or default.
- 14.5 The Buyer shall not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract or to sub-contract any of its obligations under the Contract.
- 14.6 The Company shall be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under the Contract and to sub-contract any of its obligations under the Contract.
- 14.7 The Company's employees, agents and sub-contractors shall be entitled to enforce conditions 7.3, 8.7,, 9.9, 9.11 and 9.12 subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of the Contract.
- 14.8 The parties may vary or rescind the Contract without the consent of the Company's employees, agents or sub-contractors.
- 14.9 Save as provided in condition 14.7, the parties do not intend that any term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.
- 14.10 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
- 14.10.1 neither party has entered into the Contract in reliance upon, and it shall have no remedy in respect of, any representation or statement which is not expressly set out in the Contract; and
- 14.10.2 nothing in this condition 14.10 shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.

15. NOTICE

- 15.1 Subject to condition 15.4 any notice or other communication given under or in connection with the Contract shall be in writing, in the English language and:
- 15.1.1 delivered by hand;
- 15.1.2 sent by pre-paid recorded delivery
- 15.1.3 sent by pre-paid airmail post;
- 15.1.4 sent by facsimile; or
- 15.1.5 email

to the Company at the address, facsimile number or email address and marked for the attention of the individual detailed below or to the Buyer at the address, facsimile number or email address detailed in any purchase order or other document received by the Company from the Buyer (or such other address, facsimile number, email address or, in the case of the Company, individual, as may be notified by the relevant party to the other party from time to time in accordance with this condition 15):

The Company: Lower Road, Barnacle, Nr Coventry, United Kingdom, CV7 9LD

Fax: +44 (0) 2476 621 796

Email: askelhon@woodwayengineering.com

For the attention of: The Managing Director

- 15.2 Any notice or communication given in accordance with condition 15.1 shall be deemed to have been served:
- 15.2.1 if delivered by hand, at the time of delivery;
 - 15.2.2 if sent by pre-paid recorded delivery at 9.00 a.m. GMT/BST (as appropriate) on the second Business Day after the date of posting;
 - 15.2.3 if sent by pre-paid airmail post at 9.00 a.m. GMT/BST (as appropriate) on the fifth Business Day after the date of posting;
 - 15.2.4 if sent by facsimile at the time of confirmation of completion of transmission by way of a transmission report; and
 - 15.2.5 if sent by email, when the recipient acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this section 15

provided that if a notice or communication is deemed to be served before 9.00 am GMT/BST (as appropriate) on a Business Day it shall be deemed to be served at 9.00 am GMT/BST (as appropriate) on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00 pm GMT/BST (as appropriate) on a Business Day it shall be deemed to be served at 9.00 am GMT/BST (as appropriate) on the immediately following Business Day.

- 15.3 To prove service of a notice or communication it shall be sufficient to prove that the provisions of condition 15.1 were complied with.
- 15.4 This condition 15 shall not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

16. **GOVERNING LAW AND JURISDICTION**

- 16.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with English law.
- 16.2 The Buyer and the Company agree, for the sole benefit of the Company, subject to as provided below, the courts of England shall have the exclusive jurisdiction over any dispute or claim arising out of or in connection with these Terms and Conditions or their subject matter or formation (including non-contractual claims). Nothing in this condition 16.2 shall limit the Company's right to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.