eminate Limited - CONDITIONS OF SALE

GENERAL
1. In these Conditions:
   a. “eminate Limited” is called “eminate” and the individual firm, company or other party with whom eminate contracts is called “the Customer.”
   b. “Goods” means the goods, articles, materials and services which are to be supplied by eminate pursuant to the Contract.
   c. Any contract, however made between eminate and the Customer (“the Contract”) shall incorporate and be subject to these Conditions and receipt of Goods by the Customer shall be deemed to be conclusive proof that the Customer has accepted these Conditions in the absence of any express or other implied acceptance of these Conditions by the Customer.
   d. Without prejudice to the generality of the foregoing, all other terms and conditions (except those implied in favour of a seller which are not inconsistent with these Conditions), whether or not the same are endorsed upon, delivered with, or referred to, in any purchase order or any other document delivered or sent by the Customer to eminate, are expressly excluded. Any reference in the Contract to any document of the Customer shall not be construed as excluding any such terms and conditions unless specifically so excluded.

DELIVERY AND RISK
3. Delivery of the Goods shall be made to the Customer at the place specified in the Contract or as subsequently directed by him, subject to the provisions of Section 12 of the Sale of Goods Act 1979 delivered to the carrier well, in such circumstances, constitute delivery to the Customer.
4. eminate shall be entitled to make delivery of the Goods by instalments and to invoice the Customer for each instalment separately.
5. Where damage to or loss of the Goods occurs before delivery thereof to the Customer eminate undertakes (subject as provided below) to remove free of charge any Goods so damaged or lost in which event the time for delivery of the Goods shall be extended for such period as eminate reasonably considers necessary for the replacement of the Goods. In the event of any such damage or loss the Customer shall forthwith give written notice to eminate, notifying in particular the Goods affected and any reasonable particulars thereof to eminate and to the carrier within three days of the receipt of the Goods and a claim must be made for or written within one month of such notification. After twenty eight days and the claim being made in writing within forty two days of receipt of eminate’s or the carrier’s delivery advice or other notification of damage. If at the time of delivery thereof to the Customer eminate proves that:
   a. It was not reasonably possible for the Customer to advise eminate and the carrier to make a claim in writing within the time limit applicable;
   b. Such advice or claim was given or made within a reasonable time;
   c. eminate shall not have any liability whatsoever for or in connection with damage to or loss of the Goods in transit to the contracted place of delivery.

TITLE
5. i) Title to and property in the Goods shall remain vested in eminate until such time as payment of the price thereof has been made in full and the Customer further agrees that:
   a. The Customer shall grant eminate a right of entry to his premises to free and unrestricted entry upon the Customer’s premises and/or locations where a Customer’s goods are to be supplied by eminate and to touch and identify the Goods by taking all reasonable steps to check whether the Goods are or are not the same are endorsed on the invoice. Where Goods are shown, to the reasonable satisfaction of eminate, to be ready for collection or delivery, the Customer shall accept or refuse delivery of the Goods and the Customer shall be under a duty to notify eminate of his intention to accept or to reject the Goods as soon as possible after such inspection.
   b. The Customer shall keep the Goods to which this Condition applies in proper condition and in the same place and at all times and shall ensure that they are not disposed of in any way in such manner as to prejudice the title of eminate.
   c. Where Goods are supplied to the Customer in accordance with periodic delivery schedules or similar arrangements, they shall be deemed to have been supplied and delivered to the Customer in one lot at the time of the last delivery under such arrangements.
   d. The Customer shall indemnify eminate against all claims and expenses incurred by eminate on account of any breach by the Customer of any of the provisions of this Condition or any other contract between eminate and the Customer; or by reason of any of the Customer’s acts or omissions.
   e. Without prejudice to any other rights or remedies of eminate, on the happening of any of the events mentioned in this Condition, eminate shall be entitled to enter into the Customer’s premises or such other premises as the Goods are situated.
   f. The Customer shall on demand account for all Goods supplied by eminate to the actual date of such termination, eminate shall not have any liability to the Customer for any direct or consequential loss or damage suffered by the Customer as a result of eminate’s inability to perform its obligations under the Contract by reason of any such circumstances.
   g. Where Goods are delivered by instalments each such instalment shall be deemed to be sold or supplied in accordance with the provisions of Sections 33 and 34 of the Sale of Goods Act 1979. The risk of loss or damage to the Goods shall pass to the Customer at the time of delivery of any instalment.
   h. The Customer shall pay the Contract price for all Goods supplied by eminate to the actual date of such termination, eminate shall not have any liability to the Customer for any direct or consequential loss or damage suffered by the Customer as a result of eminate’s inability to perform its obligations under the Contract by reason of any such circumstances.

ACCEPTANCE
6. a. Without prejudice to the Customer’s rights under Condition 8 hereof the Customer shall be deemed to have accepted the Goods as being in conformity with the Contract and shall be bound to pay for them, unless written notice of rejection thereof is received by eminate within 3 days of delivery. Save in the circumstances referred to in Condition 8 hereof the Customer accepted by the Customer cannot subsequently be returned and any claim which the Customer may have in respect of the Contract or any of the Conditions shall be barred.
   b. Subject to any rejection of Goods which the Customer may validly make in accordance with these Conditions, any Goods not rejected by the Customer within the period specified in Condition 7 hereof shall be deemed to have been accepted and delivered to the Customer.
   c. In the event of any such rejection the Customer shall, within 14 days of such written notice, give eminate written notice specifying in detail the grounds on which the rejection is made.
   d. If the Goods supplied or ordered by the Customer and on delivery thereof to the Customer are not in accordance with the Contract or the Customer is in default in any other respects, the Customer shall give written notice thereof within 28 days of written notification from eminate that the Goods are ready for collection or delivery, eminate shall be entitled (without prejudice to any right of the Customer to refuse to accept the Contract for such breaches) to accept the Goods and to apply the proceeds of sale thereof if paid towards payment of all sums due to eminate under the Contract.

PAYMENT
7. a. Unless the Contract otherwise provides, the contract price for Goods shall be payable not later than 14 days after the date of delivery or by such other date as is stipulated by the Contract.
    b. Where Goods are supplied by eminate to the Customer, the Customer shall be liable for any expenses, costs or charges incurred by eminate whether for the benefit of the Customer or otherwise, in connection with the delivery of the Goods, which are not otherwise recoverable from the Customer;
   c. All sums due from the Customer to eminate shall be paid free of all costs and expenses of collection, including but not limited to all costs and expenses incurred in connection with the recovery of any claims, or otherwise recoverable from the Customer.
   d. Without prejudice to any right of the Customer to refuse to accept the Contract for such breaches, the Customer shall be entitled to reimbursement of any additional costs and expenses incurred by the Customer in the event of any breach of a Contract by the Customer having caused such breach to be remedied or not being remedied; or if any such breach is so prevented or hindered provided in the Contract.
   e. eminate shall be entitled to interest before as well as after judgment of any part of the Contract price not paid by the Customer within 30 days of such final and formal payment, at the rate of 4 per cent per annum above the Basic Lending Rate of National Westminster Bank plc prevailing from time to time during such period.

WARRANTY
8. a. Where any Goods are, to the reasonable satisfaction of eminate, to have been defective at the time when they left eminate’s premises, eminate shall, at its sole option:
    i. Replace the Goods (at its own expense) with goods not defective or repair the Goods to eminate’s satisfaction at its own expense;
    ii. refund to the Customer the price of the Goods and the Customer may, at its discretion, return the Goods for a full refund of the price paid (without prejudice to the generality of the foregoing).
   b. The Customer shall not be liable for any claims for economic loss, loss of profit, loss of opportunity, loss of bargain or other direct or consequential injury, loss or damage made by the Customer against eminate whether in contract or in negligence (or any other form of liability, whether joint or otherwise) arising out of or in connection with any defect in the Goods or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the Contract or not) or in respect of any act or omission, neglect, default or failure of eminate to perform the Contract or any act or omission, neglect or default of the Customer.
   c. Nothing in these Conditions shall:
    i. Limit or exclude the liability of eminate in respect of death or personal injury resulting from the negligence of eminate, its employees or agents;
    ii. Limit or exclude the rights and remedies of eminate and the Customer under the Unfair Contract Terms Act 1977 or

INDULGENCE AND BREACH OF CONTRACT
9. a. The Customer shall not be entitled to any indulgence or release whether or in connection with any breach of the Contract or in respect of anything the Customer may do or suffer by way of breach or delay in the performance of his part of the Contract.
    b. eminate shall not be liable for any delay, whether or not due to circumstances beyond its control, in the delivery of the Goods or for any failure by eminate to comply with any of the terms and conditions of the Contract.
   c. Any indulgence or delay given by eminate shall not be construed as an waiver of any of its rights and remedies under the Contract.
   d. The rights and remedies of eminate under the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by eminate nor by any failure of or delay by eminate in asserting or exercising any such rights or remedies.

WAIVER
12. These Conditions and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the Laws of England and eminate and the Customer irrevocably submit to the exclusive jurisdiction of the English Courts.