

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 (as hereinafter defined).
 - c. Any contract, howsoever 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 deemed to imply that any terms or conditions endorsed upon, delivered with, or referred to, in any such document, will have effect.

PRICES

2. Unless otherwise provided in the Contract:
 - a. The price of the Goods is exclusive of Value Added Tax, which will be charged at the rate applicable at the appropriate tax point.
 - b. The price of the Goods includes the cost of carriage to the contracted place of delivery by the means most convenient to **eminate**. If the Customer instructs **eminate** to send the Goods by passenger train, parcel post, airfreight or other special transport, the additional cost will be for the account of the Customer.

DELIVERY AND RISK

3.
 - a. Delivery of the Goods shall be made to the Customer at the place specified in the Contract or as subsequently agreed between the parties and the risk in respect of all Goods shall pass to the Customer at the time of delivery. Special notice is directed to the fact that in accordance with the provisions of Section 32 or the Sale of Goods Act 1979 delivery to the carrier will, in such circumstances, constitute delivery to the Customer.
 - b. **eminate** shall be entitled to make delivery of the Goods by instalments and to invoice the Customer for each instalment dispatched.
 - c. Where damage to or loss of the Goods occur before delivery thereof to the Customer **eminate** undertakes (subject as provided below) to replace 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** shall reasonably require for such replacement. The foregoing undertaking of **eminate** is conditional upon the Customer giving written notice of such damage or loss with reasonable particulars thereof to **eminate** and to the carrier within three days of the receipt of the Goods and a claim being made in writing within seven days or in the case of total loss the said notice being given within 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 dispatch. Provided that if the Customer proves that:
 - i) It was not reasonably possible for the Customer to advise **eminate** and the carrier or make a claim in writing within the time limit applicable; and
 - ii) Such advice or claim was given or made within a reasonable time; **eminate** shall not have the benefit of the exclusion of liability afforded by this Condition;
 - d. Save as expressly provided in this Condition, **eminate** shall not have any liability whatsoever for or in connection with any damage to or loss of the Goods in transit to the contracted place of delivery.

TITLE

4.
 - a. Title to and property in the Goods shall remain vested in **eminate** (notwithstanding the delivery of possession of the same and the passing of the risk therein to the Customer) until:
 - i) The price of the Goods comprised in the Contract; and
 - ii) All other money due by the Customer to **eminate** or any other account; has been paid or satisfied in full;
 - b. Until the title to and property in the Goods pass to the Customer as aforesaid the following provisions shall apply:
 - i) **eminate** may at any time without prior notice to the Customer repossess and resell the Goods if in any, of the events specified in Condition 9 hereof shall occur, or if any sum owed by the Customer to **eminate** under this or any other Contract between the Customer and **eminate** is not paid on the due date for payment. For the purpose of exercising its rights under this sub-clause (i) **eminate** its employees or agents together with all vehicles and plant considered by **eminate** to be necessary shall be entitled at any time without prior notice to the Customer to free and unrestricted entry upon the Customer's premises and/or locations where any of the Goods are situated.
 - ii) The Customer shall store the Goods in a proper manner without charge to **eminate** and ensure that they are clearly identified as belonging to **eminate**. **eminate** shall be entitled to examine the Goods in storage at any time during normal business hours and upon giving the Customer reasonable notice of its intention to do so.
 - iii) The rights and remedies conferred upon **eminate** by this Condition 4 are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of **eminate** under the Contract.

PERFORMANCE

5.
 - a. **eminate** will use its reasonable endeavours to comply with any date or dates for dispatch or delivery of the Goods as states in the Contract, but unless the Contract otherwise expressly provides in such date or dates shall constitute only statements of expectation and shall not be binding. If **eminate** having used its reasonable endeavours fails to dispatch or deliver the Goods on such date or dates, such failure shall not constitute a breach of the Contract nor shall the Customer be entitled to treat the Contract as thereby repudiated or to rescind it or any related contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting there from.
 - b. If **eminate** is prevented or hindered from performing the Contract or any part thereof by any circumstances beyond its reasonable control including (but without limiting the generality of the foregoing) strikes, lock-outs or other industrial action, inability to obtain materials or labour, power or machinery breakdown or failure, fire, flood, civil commotion or any cause of whatever kind and whenever occurring, further performance of the Contract shall be suspended for so long as **eminate** is so prevented or hindered provided that if the performance of the Contract is suspended for more than one calendar month the Customer shall be entitled by notice in writing to **eminate** forthwith to terminate the Contract or to cancel any outstanding part thereof and in such circumstances the Customer shall pay at the Contract rate 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 obligation under the Contract by reason of any such circumstances.
 - c. Where Goods are delivered by instalments each such instalments shall be deemed to be sold or supplied under a separate contract to which these Conditions shall apply (mutatis mutandis) and save as provided in sub-clause (d) of this Condition no default in respect of any one instalment shall effect or prejudice due performance of the Contract as regards any other instalments.
 - d. Where Goods are to be supplied or delivered by **eminate** in accordance with periodic delivery schedules or similar notification of the delivery requirement which is expressed by the Customer to be a firm requirement without the prior written consent of **eminate** and **eminate** shall be entitled to reimbursement of any additional costs and expenses incurred or suffered as a result of any such cancellation or variation;
 - e. When expedited delivery is agreed by **eminate** and necessitates overtime or other additional costs, the Customer shall reimburse **eminate** for the amount of such overtime payment or other costs. Where postponement of delivery is agreed by **eminate** the customer shall if required by **eminate**, pay all costs and expenses (including a reasonable charge for storage and insurance of the Goods and interest on the contract price) occasioned thereby, but the Goods shall be held at the Customer's risk from the time of such postponement.
 - f. If performance of the Contract is suspended at the request of or delayed through default of the Customer including (without prejudice to the generality of the foregoing) lack of or incomplete or incorrect instructions or refusal to collect or accept delivery of the Goods for a period of 14 days, **eminate** shall be entitled to payment at the Contract rate for Goods supplied or ordered and any other additional costs thereby incurred including storage, insurance and interest PROVIDED THAT if the Customer fails to collect or accept delivery of the Goods or any part 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 its other remedies under the Contract for such breach) to sell the Goods and to apply the proceeds of sale thereof if sold towards payment of all sums due to **eminate** under the Contract.

ACCEPTANCE

6.
 - a. Without prejudice of 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 Goods accepted by the Customer cannot subsequently be returned and any claim which the Customer might otherwise have shall be deemed to have been waived.
 - b. If after notice of rejection has been given, the Customer deals with Goods as owner thereof or if any conduct of the Customer is inconsistent with such rejection or with the ownership of the Goods by **eminate**, the Customer shall be deemed to have accepted the Goods and be bound to pay for them.

PAYMENT

7.
 - a. Unless the Contract otherwise provides, the contract price for Goods shall be payable not later than 14 days after the invoice date or otherwise as by the Contract provided.
 - b. Where Goods are delivered by instalments, the Customer shall be obliged to pay for each instalment upon the terms set out in sub-clause (a) of this Condition.
 - c. The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall entitle **eminate** upon the expiration of 21 days notice in writing to the Customer to suspend further performance of the Contract pending payment and in addition **eminate** shall be entitled without liability to the Customer to suspend performance of or cancel in whole or in part available to **eminate** in respect of each default in payment.
 - d. Unless otherwise agreed in writing the Customer shall not be entitled to set off against monies due to **eminate** under the Contract, any amount claimed by or due to the Customer from **eminate** whether pursuant to the Contract or any other account whatsoever.
 - e. **eminate** shall be entitled to interest before as well as after judgement of any part of the Contract price not paid by its due date from that date until actual payment, at the rate of 4 per cent per annum above the Base Lending Rate of National Westminster Bank plc prevailing from time to time during such period.

WARRANTY

8.
 - a. Where any Goods are shown, 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) Deliver replacement Goods to the Customer free of charge; and/or
 - ii) Refund to the Customer the contract price of such Goods;PROVIDED that:
 - i) the Customer notifies **eminate** in writing within fourteen days of becoming aware of any such defect; and
 - ii) if so required by **eminate** all defective Goods are first returned to **eminate's** premises; and
 - iii) the liability of **eminate** under this sub-clause (a) shall be accepted by the Customer in substitution for and to the exclusion of any and all other claims for direct loss which the Customer has or may have by reason of any such defect.
 - b. **eminate** 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 tort (including negligence on the part of **eminate**, its servants or agents) 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 the breach of a fundamental term thereof) of **eminate**, its employees or agents in the performance of the Contract (including without limiting the generality of the foregoing, breach of any condition or warranty whether express or implied by statute, common law or otherwise howsoever).
 - 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; or
 - ii) Limit or exclude the respective rights and remedies of **eminate** and the Customer under the Unfair Contract terms Act 1977, or
 - iii) Exclude the conditions and warranties implied by Section 12 of the Sale of Goods Act 1979.

INSOLVENCY AND BREACH OF CONTRACT

9.
 - a. If any of the following events occur, are threatened or in the opinion of **eminate** are reasonably likely to occur:
 - i) The Customer shall commit any breach of Contract and shall fail to remedy such breach (if capable of remedy) within a period of thirty days from receipt of notice in writing from **eminate**, requesting such breach to be remedied; or
 - ii) Any distress or execution is levied upon any of the Goods or property of or in the possession of the Customer; or
 - iii) The Customer (or where the Customer is a partnership any partner thereof) offers to make any arrangement with or for the benefit of its or his creditors or commits any act of bankruptcy; or
 - iv) The Customer (being a limited company) has a Receiver appointed for the whole or any part of its undertaking property or assets or any order is made or a resolution passed or analogous proceedings are taken for the winding-up of the Customer (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by **eminate**).
 - b. **eminate** shall thereupon be entitled without prejudice to its other rights hereunder, forthwith to suspend further performance of the Contract and of any other contract between **eminate** and the Customer until the default has been made good or to terminate the Contract or any other contract between **eminate** and **eminate** and the Customer or any unfulfilled part thereof or at **eminate** option to make partial supplies of Goods. Notwithstanding any such termination, the Customer shall pay to **eminate** at the Contract rate for all Goods delivered up to and including the date of termination and shall in addition indemnify **eminate** against any loss, damage or expense incurred by **eminate** as a result of such default.

SEVERANCE

10. If at any time one or more of these Conditions (or any paragraph sub-paragraph or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted, herefrom and the validity and/or enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired thereby.

WAIVER

11. 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.

LAW

12. These Conditions and each 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.