

RILEY INDUSTRIES LTD STANDARD TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES

The Customer's attention is particularly drawn to the provisions of clause 16 (Limitation of liability).

1. APPLICATION OF CONDITIONS

- 1.1 Riley shall supply and the Customer shall purchase the Goods and/or Services in accordance with the Order which shall be subject to these Conditions.
- 1.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In these Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Bid Acceptance" means a confirmation email from Riley to the Customer confirming that a Bid has been accepted at which point the Contract for the sale and purchase of the Lot is formed.

"Bid" means offer by the Customer to Riley to purchase a Lot from the Online Auction at the price stated in the bid.

"Buy Now Bid" means an offer by a Customer to purchase a Lot outside of the Online Auction at the fixed price shown.

"Business Day" means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

"Commencement Date" means the commencement date for the provision of the Services as set out in the Pro-Forma Invoice.

"Conditions": these terms and conditions as amended from time to time in accordance with clause 19.6.

"Contract" means the contract between Riley and the Customer for the supply of the Goods and/or Services in accordance with these Conditions.

"Contract Price" means the price stated in the Contract payable for the Goods and/or Services.

"Customer" means the person who accepts a quotation or offer of Riley for the sale of the Goods and supply of the Services, or whose order for the Goods and Services is accepted by Riley.

"DFSC Goods" means goods sold direct from a site clearance carried out by Riley acting as agent for the owner /seller of the goods and which are supplied on a sold as seen basis with no warranty that the goods are in working order or fit for purpose or of a satisfactory quality.

"Delivery Date" means the estimated date on which the Goods are to be delivered as stipulated in the Pro-Forma Invoice.

“Goods” means the Non-Warranty Goods and Warranty Goods together (including any instalment of the goods or any parts for them) set out in the Pro-Forma Invoice which Riley is to supply in accordance with these Conditions.

“Lot” means Goods sold via the Online Auction which are supplied on a Sold as Seen basis with no warranty that the goods are in working order or fit for purpose or of a satisfactory quality.

“Month” means a calendar month.

“New Goods” means new machines supplied with a 12 month warranty (or such other period as is specified in the Pro-Forma Invoice).

“Non-Warranty Goods” means DFSC Goods, Sold as Seen Goods, and Lots.

“Online Auction” means the online auction operated through the Website for the Sale of Lots.

“Order” means the Customer's written acceptance of the Riley's quotation.

“Pro-Forma Invoice” has the meaning given in clause 3.2(a).

“Refurbished Goods” means goods refurbished to a high standard, tested and parts replaced as necessary, prior to dispatch; and unless otherwise stated in the Pro-Forma Invoice guaranteed thereafter for three months to be in working order.

“Riley” means Riley Industries Limited a company registered in England and Wales with number 01965748 whose registered office is at Redhouse Industrial Estate, Middlemore Lane West, Aldridge, Walsall, West Midlands WS9 8BG.

“Services” means the Services to be provided to the Customer as set out in the Pro-Forma invoice

“Sold as Seen Goods” means goods offered for sale on a sold as seen basis meaning Riley gives no warranty that the goods are in working order or fit for purpose or of a satisfactory quality.

“Warranty Goods” means New Goods and Refurbished Goods.

“Website” means www.rileysurfaceworld.co.uk.

2.2 Unless the context otherwise requires, each reference in these Conditions to:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) **“writing”**, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- (c) a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- (d) a Schedule is a schedule to these Conditions;
- (e) any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;

- (f) a Clause or paragraph is a reference to a Clause of these Conditions (other than the Schedules) or a paragraph of the relevant Schedule; and
 - (g) a “Party” or the “Parties” refer to the parties to the Contract and includes its personal representatives, successors and permitted assigns.
- 2.3 The headings used in these Conditions are for convenience only and shall have no effect upon the interpretation of these Conditions.
- 2.4 Words imparting the singular number shall include the plural and vice versa.
- 2.5 References to any gender shall include the other gender.
- 2.6 The Customer shall not be treated as acting as a consumer in respect of any Contract.

3. BASIS OF CONTRACT (EXCEPT FOR ONLINE AUCTIONS)

- 3.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. For the avoidance of doubt, in the event of any inconsistency between the Order and the Pro-Forma Invoice, the Pro-Forma Invoice shall prevail.
- 3.2 The Order shall only be deemed to be accepted and a Contract shall come into existence on the earlier of:
- (a) Riley issuing written acceptance of the Order by the issue of an order confirmation or a Pro-Forma Invoice (“**Pro-Forma Invoice**”) at which point and on which date a Contract shall come into existence; or
 - (b) delivery of the Goods; or
 - (c) provision of the Services; or
 - (d) Riley issuing an invoice to the Customer.
- 3.3 Riley’s employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by Riley in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 3.4 Sales literature, price lists and other documents issued by Riley in relation to the Goods and Services are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Riley shall be subject to correction without any liability on the part of Riley.
- 3.5 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

4. THE GOODS (EXCEPT FOR LOTS)

- 4.1 The specification for the Goods shall be that set out in Riley's sales documentation unless varied expressly in the Customer's order (if such variation(s) is/are accepted by Riley in writing).
- 4.2 Any samples, drawings, descriptive matter or advertising issued by Riley and any descriptions of the Goods or illustrations or descriptions of the Services contained in Riley's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 4.3 Riley reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to Riley's specification, which do not materially affect their quality or performance.

5. THE SERVICES

- 5.1 With effect from the Commencement Date Riley shall supply the Services to the Customer that are expressly identified in the Pro-Forma Invoice.
- 5.2 Riley will use reasonable care and skill to perform the Services.
- 5.3 Riley shall use reasonable endeavours to meet any performance dates for the Services specified in the Pro-Forma Invoice, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 5.4 Riley reserves the right to amend the specification of the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Riley shall notify the Customer in any such event.

6. ONLINE AUCTIONS AND LOTS

- 6.1 Lots are sold with all faults, imperfections and errors of description and Riley make no representations of any nature with respect to the Lots, including with regard to their physical condition, quality, suitability, or fitness for use. The Customer will not hold Riley responsible for the quality, safety or legality of the Lots.
- 6.2 By registering as a bidder on the Website, the Customer agrees to be bound by all the terms and conditions set out herein, together with any other terms, conditions and notices on the Website.
- 6.3 The Customer will be required to supply its name, email address and other contact information. The Customer must provide Riley with accurate and up-to-date information. The Customer acknowledges that Riley may suspend or terminate use of the Website if it appears

any of the registration information provided by the Customer is inaccurate in any material respect.

- 6.4 The Customer must not take any action that may interfere with the Website insert into or submit through the Website any viruses, Trojans or any other variation on type or version of software or malware that could have the effect of compromising the operation of the Website.
- 6.5 The Customer also agrees not to undermine, manipulate or otherwise interfere with the bidding system, for example bidding without intending to pay the bid price.
- 6.6 Any breach by the Customer of these Conditions will lead to the automatic termination of a right to access the Website and make a Bid.
- 6.7 Please be aware that by bidding on any of the Lots, you will be entering into a legally binding agreement by which you are committing to buy the Lot you have bid on and pay the price you have bid plus VAT, any other taxes, buyer's premium, transaction charges and delivery charges.
- 6.8 Once registered, the Customer will be able to Bid by clicking on the icon of your chosen Lot and a new page will open. The Customer will then be asked to confirm its Bid. Once the Bid is placed, the Customer will not have any right to withdraw or cancel that Bid.
- 6.9 It is important for the auction process that the Customer provides the correct information and Riley reserves the right to cancel the Bid.
- 6.10 The Lots may be offered subject to reserves. The Website will show the current highest bid against each Lot in real time but Riley does not guarantee that the latest bid appears immediately, especially during busy times. Each bidder will be sent an e-mail each time they have been outbid.
- 6.11 The Website will state the closing date and time of the Online Auction but the Customer acknowledges that if Riley receives a bid within 2 minutes of the closing time of the Online Auction the time will be extended for a further 2 minutes.
- 6.12 Any Bid received by Riley constitutes an offer by the Customer to purchase the Lot. The Customer acknowledges that it will not win the Lot until such time as Riley has issued a Bid Acceptance. Riley therefore reserves the right to withdraw a Lot from the Online Auction at any time without reason before a Bid Acceptance has been issued to the Customer.
- 6.13 Riley's right to withdraw a Lot from the Online Auction will be exercised if a Lot as been subject to a Buy Now Bid.
- 6.14 Riley will use all reasonable endeavours to ensure its Website is available but it cannot and does not offer any guarantees that the Website will operate continuously and without interruptions. This could affect biddings and other aspects of the Online Auction without liability to Riley.

- 6.15 By placing a Bid the Customer is warranting to Riley that it is legally entitled to do so.
- 6.16 **Where the Lots are DFSC Goods the terms of clause 7 shall apply in addition to those set out within this clause 6.**
- 6.17 Except as stated otherwise or otherwise varied all other terms herein apply to Lots and where varied such variations prevail.

7. DFSC Goods

- 7.1 **Some DFSC Goods are sold by Riley on an agency basis on behalf of the seller of the DFSC Goods who legally owns them – and – where they are sold on an agency basis Riley will use reasonable endeavours to identify the Seller of the DFSC Goods and any additional terms of sale on the Pro-Forma Invoice. The contract for the sale and purchase of the relevant DFSC Goods sold on an agency basis will be between the Customer and the relevant applicable seller and not Riley who simply facilitates the sale of the relevant DFSC Goods and processes payment on behalf of the owner of them.**
- 7.2 Without limiting clause 7.1, DFSC Goods are sold with all faults, imperfections and errors of description and Riley makes no representations of any nature with respect to the DFSC Goods, including (but without limitation) with regard to their physical condition, quality, suitability, or fitness for use. The Customer will not hold Riley responsible for:
- (a) the quality, safety or legality of the DFSC Goods;
 - (b) the accuracy or truth of the information supplied about the DFSC Goods;
 - (c) the unfettered title of the DFSC Goods and the full right to list the DFSC Goods for sale.

8. PRICE

- 8.1 Except in respect of Lots the price of the Goods and/or Services shall be the price listed on the Pro-Forma Invoice current at the date of acceptance of the Order or such other price as may be agreed in writing by Riley and the Customer.
- 8.2 Starting prices in respect of Lots shall be shown on the Website through the Online Auction and the price to enable a Buy Now Bid will also be shown where applicable.
- 8.3 Where Riley has quoted a price for the Goods other than in accordance with Riley's published price list the price quoted shall be valid for 30 days only or such lesser time as Riley may specify. Any quotation given by Riley shall not constitute an offer.
- 8.4 Riley reserves the right, by giving written notice to the Customer at any time before delivery or provision, to increase the price of the Goods and/or Services to reflect any increase in the cost to Riley which is due to:

- (a) any factor beyond the control of Riley (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture);
 - (b) any change in delivery dates, quantities or specifications for the Goods and/or Services which are requested by the Customer;
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give Riley adequate information or instructions; or
 - (d) in respect of Refurbished Goods where the estimated refurbishment costs are insufficient to cover the level of repair required.
- 8.5 Except as otherwise stated under the terms of the Pro-Forma invoice or in any price list of Riley, and unless otherwise agreed in writing between the Customer and Riley, all prices are exclusive of:
- (a) Riley's charges for packaging, insurance and transport; and
 - (b) applicable value added tax, excise duty, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods and/or Services,
- which the Customer shall be additionally liable to pay to Riley.

9. PAYMENT

- 9.1 Subject to any special terms agreed in writing between the Customer and Riley, Riley may supply a Pro-Forma Invoice to the Customer for the price of the Goods and Services on or at any time after receipt of the Customer's order or with acceptance of a Bid in respect of the purchase of a Lot.
- 9.2 Unless otherwise specified in the Pro-Forma Invoice, the Customer shall pay the price of the Goods (less any discount or credit allowed by Riley, but without any other deduction, reduction, credit or set off) as follows:
- (a) all Non-Warranty Goods and any orders worth £10,000 or less shall be paid for in full on the date the Pro-Forma Invoice is issued;
 - (b) all Warranty Goods and some orders worth more than £10,000 require a deposit in the amount set out on the Pro-Forma Invoice to be paid on the date the Pro-Forma invoice is issued with the balance to be paid 5 Business Days prior to the date that Riley specifies for delivery; and
 - (c) all Lots shall be paid for in full on the date the Bid Acceptance is issued and the terms of clauses 9.2(a) and 9.2(b) shall not apply to them.
- 9.3 The Customer shall pay the price of the Services (less any discount or credit allowed by Riley, but without any other deduction, reduction, credit or set off) in full on the date the Pro-Forma Invoice is issued.

- 9.4 The time for the payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request. All payments shall be made to Riley as indicated on the Pro-Forma Invoice or as otherwise requested by Riley.
- 9.5 Unless otherwise stated on the Pro-Forma Invoice, Orders for any Goods supplied under these Conditions shall not commence until payment of the applicable sum under clause 9.2 is received in cleared funds. Without prejudice to any right or remedy available to Riley, Riley reserves the right to cancel any order which is not paid for in accordance with clause 9.2.
- 9.6 If a part exchange has been agreed between Riley and the Customer, Riley will confirm and credit the part exchange value on the Pro-Forma Invoice.

10. DELIVERY AND PERFORMANCE

- 10.1 Delivery of the Goods shall be made by Riley delivering the Goods to the location specified in the Pro-Forma Invoice or, if no place of delivery is so specified or agreed by Riley, by the Customer collecting the Goods at Riley's premises within 10 Business Days after Riley has notified the Customer that the Goods are ready for collection.
- 10.2 The Delivery Date shown on the Pro-Forma Invoice is an approximate estimate only as lead and delivery times can vary; and time for delivery shall not be of the essence. Riley shall not be liable for any delay in delivery of the Goods that is caused by an event specified in clause 18 or the Customer's failure to provide Riley with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. The Goods may be delivered by Riley in advance of the Delivery Date upon giving reasonable notice to the Customer.
- 10.3 Delivery of the Goods shall be completed on the completion of unloading (in the case of delivery by Riley) or loading (in the case of collection from Riley) of the Goods at the applicable delivery location.
- 10.4 If the Customer fails to take or accept delivery of the Goods within ten Business Days of the Riley notifying the Customer that the Goods are ready and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, Riley shall be entitled upon given written notice to the Customer to store or arrange for the storage of the Goods and then notwithstanding the provisions of sub-Clause 10.1 of these Conditions risk in the Goods shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to Riley all costs and expense including (but not limited to) storage and insurance charges arising from such failure.
- 10.5 If the Goods are not collected within 10 Business Days from date the Customer fails to take delivery or collection then Riley reserves the right to retain the Goods and offer them for resale or otherwise to dispose of the Goods without further liability or reimbursement to the Customer.
- 10.6 The cost of delivery and return of any Goods under clause 13 or otherwise shall be met by the Customer.

- 10.7 Where relevant to enable Riley to exercise its rights or perform its obligations under the Contract, the Customer shall ensure that Riley and its agents are given full access to any site or premises where the Goods are located.
- 10.8 Where Goods are to be collected from Riley's premises, then unless stated otherwise in the Pro-Forma Invoice:
- (a) the goods will be loaded to customer's transport. The Customer is responsible for the removal of the Goods and acknowledges that Riley's site personnel will not be able to assist in this regard;
 - (b) Goods will only be released if full payment has been received by Riley; and
 - (c) the Customer must arrange a collection time with Riley and collect the Goods at the allotted time.
- 10.9 Where DFSC Goods are purchased they may require collection from the relevant seller's site, the location of which shall be notified to the Customer on production of the Pro-Forma Invoice or Bid Acceptance and in such cases:
- (a) the Customer is responsible for the removal and loading of the Goods and acknowledges that site personnel will not be able to assist in this regard;
 - (b) Goods will only be released if full payment has been received by Riley;
 - (c) the Customer must arrange a collection time with Riley and collect the Goods at the allotted time and sign any collection note provided to the Customer and supply that to Riley;
 - (d) the Customer must follow all site procedures and comply with all requirements of the site regarding health and safety or otherwise; and
 - (e) all Customer vehicles intended for use at the site must be pre-notified to Riley who reserves the right to restrict certain vehicles as may be required in accordance with the requirements of the owner of the site.
- 10.10 In certain cases DFSC Goods are not available for collection and delivery shall be arranged by Riley on behalf of the seller at the Customer's cost.
- 10.11 The Customer must take all necessary steps to ensure that Goods purchased are safe and without risks to health when they are re-installed, re-used, cleaned or maintained by a person at work. By accepting these terms and conditions the Customer agrees to relieve Riley and the Seller of any liabilities under section 6(1)(a) or 6(1A) of the Health and Safety at Work Act 1974, and accepts that failure to facilitate all necessary safety requirements before taking the Goods into service may render the Customer liable to prosecution and / or a fine of up to £20,000 on summary conviction. (Note: It is a UK legal requirement that before work equipment can be taken into use it must comply with the Provision and Use of Work Equipment Regulations 1998 and any other relevant legislation).

11. RISK AND RETENTION OF TITLE

- 11.1 Risk of damage to or loss of the Goods shall pass to the Customer at:
- (a) in the case of Goods to be delivered at Riley's premises, the time when Riley notifies the Customer that the Goods are available for collection;
 - (b) in the case of Goods to be delivered otherwise than at Riley's premises, the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when Riley has tendered delivery of the Goods; or
 - (c) in the case of Goods being installed by Riley, the time that Riley notifies the Customer that the installation is complete.
- 11.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, legal and beneficial title of the Goods shall not pass to the Customer until Riley has received in cash or cleared funds payment in full of the price of the Goods and any other goods supplied by Riley, and the Customer has repaid all moneys owed to Riley, regardless of how such indebtedness arose.
- 11.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Riley's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Riley's behalf from the date of delivery;
 - (d) notify Riley immediately if it becomes subject to any of the events listed in clause 15.4; and
 - (e) give Riley such information relating to the Goods as the Riley may require from time to time.
- 11.4 Subject to clause 11.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Riley receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as the Riley's agent; and
 - (b) title to the Goods shall pass from the Riley to the Customer immediately before the time at which resale by the Customer occurs.
- 11.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.4, then, without limiting any other right or remedy Riley may have:
- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) the Riley may at any time:

- (i) require the Customer to deliver all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

12. ASSIGNMENT

- 12.1 Riley may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 12.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Riley.

13. DEFECTIVE GOODS AND WARRANTIES

- 13.1 All Non-Warranty Goods are supplied without any warranty or other form of guarantee.
- 13.2 Except as expressly stated on the Pro-Forma Invoice, all New Goods are supplied with a 12 month manufacturer's warranty and must be inspected by the Customer on delivery. If on delivery any of the New Goods are defective in any material respect and the Customer lawfully refuses delivery of the defective Goods and the Customer gives written notice of such defect to Riley within one Business Day of such delivery, Riley shall at its option:
- (a) provide technical support by telephone or email and supply such parts as Riley deems necessary to resolve the defect;
 - (b) if technical support is unsuccessful arrange for the repair of the defective Goods pursuant to the manufacturer's warranty; or
 - (c) replace the Goods;

but Riley shall have no further liability to the Customer in respect thereof and the Customer may not reject the Goods if delivery is not refused or notice given by the Customer as set out above.

- 13.3 All Refurbished Goods must be inspected by the Customer on delivery/collection. If on delivery any of the Refurbished Goods are defective in any material respect and the Customer lawfully refuses delivery of the defective Goods and the Customer gives written notice of such defect to Riley within one Business Day of such delivery, Riley shall at its option:
- (a) provide technical support by telephone or email and supply such parts as Riley deems necessary to resolve the defect;
 - (b) if technical support is unsuccessful repair the defective Goods;
 - (c) replace the Goods with what Riley deems to be a suitable alternative; or
 - (d) refund to the Customer the price for those Goods which are defective;

but Riley shall have no further liability to the Customer in respect thereof and the Customer may not reject the Goods if delivery is not refused or notice given by the Customer as set out above.

- 13.4 No Goods may be returned to Riley without the prior agreement in writing of Riley or as set out in this clause 13.
- 13.5 Riley shall be under no liability and any warranty will not be enforceable in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow Riley's instructions (whether given orally or in writing), misuse or alteration or repair of the Goods without Riley's prior approval, or any other act or omission on the part of the Customer, its employees or agents or any third party.
- 13.6 Save as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 13.7 The Customer shall be responsible for ensuring that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Customer is in compliance with all applicable statutory requirements and that handling and sale of the Goods by the Customer is carried out in accordance with directions given by Riley or any competent governmental or regulatory authority and the Customer will indemnify Riley against any liability loss or damage which Riley might suffer as a result of the Customer's failure to comply with this condition.
- 13.8 **There is no guarantee that the Goods will be supplied with an operational manual and therefore it is the Customer's responsibility to ensure that it is capable of operating the Goods in accordance with clause 13.7.**

14. CANCELLATION RIGHTS

- 14.1 No Order which has been accepted by Riley may be cancelled by the Customer except with the agreement in writing of Riley on the terms that the Customer shall indemnify Riley in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Riley as a result of such cancellation save for:
- (a) the circumstances set out in clause 13; or
 - (b) where the estimated refurbishment costs are insufficient to cover the level of repair required and Riley notifies the Customer of an increase in the cost of Refurbished Goods in which case an alternative product, at Riley's option, will be offered (if available) or a full refund will be provided.

The statutory rights of the Customer (if any) are unaffected.

15. CUSTOMER'S OBLIGATIONS AND DEFAULT

- 15.1 In addition to any other obligations set out in these Conditions, the Customer warrants to Riley that:
- (a) any part exchange goods offered by the Customer shall be representative of and shall correspond with any description or image produced by the Customer;
 - (b) it is satisfied the Goods ordered are fit for the intended purpose;
 - (c) it acknowledges that not all Goods will be supplied with an operating manual and that it therefore assumes all risk in this regard and shall comply with all applicable laws, including health and safety laws in connection with its use of the Goods;
 - (d) it is not a consumer;
 - (e) it shall ensure that the terms of the Order are complete and accurate;
 - (f) it shall co-operate with Riley in all matters relating to the Services; and
 - (g) it shall provide Riley, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Riley to provide the Goods and/or Services.
- 15.2 If Riley's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, Riley shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Riley's performance of any of its obligations;
 - (b) Riley shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Riley's failure or delay to perform any of its obligations as set out in this clause 15.2; and
 - (c) the Customer shall reimburse Riley on written demand for any costs or losses sustained or incurred by Riley arising directly or indirectly from the Customer Default.
- 15.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Riley, Riley shall be entitled to:
- (a) cancel the Order or suspend any further deliveries of Goods or provision of Services to the Customer; and/or
 - (b) appropriate any payment made by the Customer to such of the Goods and/or Services (or the goods and and/or services supplied under any other contract between the Customer and Riley) as Riley may think fit (notwithstanding any purported appropriation by the Customer); and/or

- (c) charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum above HSBC Bank plc's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 15.4 Without affecting any other right or remedy available to it, Riley may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - (a) the Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or
 - (b) the Customer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes bankrupt; or
 - (c) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
 - (d) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (e) the Customer's financial position deteriorates to such an extent that in Riley's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (f) Riley reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 15.5 On termination of the Contract:
 - (a) the Customer shall immediately pay to Riley all of Riley's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Riley shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
 - (b) the Customer shall return all of Riley's materials and any deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Riley may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 15.6 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 15.7 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

16. LIABILITY

16.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

16.2 Subject to clause 16.1:

- (a) Riley shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, for: any loss of profit; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss or damage to goodwill; corruption or loss of software, data or information; pure economic loss; or any indirect or consequential loss, damages or expenses howsoever arising under or in connection with the Contract;
- (b) Riley shall have no liability to the Customer arising from the sale of the Non-Warranty Goods;
- (c) Riley's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, in respect of claims based on events in any calendar year arising out of or in connection with this Contract shall be limited to the Contract Price.

16.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

16.4 The Customer shall indemnify and keep indemnified Riley (on a full indemnity basis) against all actions, claims, losses, expenses and costs (on a full indemnity basis) arising from and breach by the Customer of the terms of the Contract and any obligations thereunder.

16.5 This clause 16 shall survive termination of the Contract.

17. COMMUNICATIONS

17.1 All notices under these Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

17.2 Notices shall be deemed to have been duly given:

- (a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or
- (b) when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

- (c) on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - (d) on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 17.3 All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

18. FORCE MAJEURE

- 18.1 Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

19. CONFIDENTIALITY.

- 19.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 19.2.

- 19.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 19; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 19.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

20. GENERAL

- 20.1 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 20.2 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 20.3 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 20.4 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
 - (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 20.5 **Third party rights.** A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 20.6 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 20.7 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 20.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.