

8.4.3 Unless after the discovery of the Defect We are given a reasonable opportunity to inspect the Goods before they are used or in any way interfered with. For the avoidance of doubt We acknowledge that the costs of suspending works are relevant to the determination of what is a reasonable opportunity and this sub-clause shall not apply to any works affecting the Goods which it may be reasonably necessary to carry out in the interests of safety and/or as emergency measures

8.4.4 if the Defect would have been apparent on a reasonable inspection under Clause 6.1 of these Terms at the time of unloading unless You advise us by telephone immediately and written notice of any claim is given to Us within three working days of the time of unloading; or in any other case

8.4.5 the Defect is discovered within three working days of it being discovered.

8.5 If the Goods are not manufactured by Us or have been processed or milled by a third party whether or not at our or your request our liability in respect of any Defect in workmanship or materials of the Goods will be limited to such rights against the manufacturer or the third party as We may have in respect of those Goods.

8.6 If the Goods are manufactured processed by Us to the design quantity measurement or specification of You or your agents then:

8.6.1 Subject to Clause 8.1 of these Terms We shall not be under any liability for damages whatsoever or under Clause 8.3 of these Terms at the case may be except in the event of:

8.6.1.1 fraudulent misrepresentation

8.6.1.2 misrepresentation where the representation was made or confirmed in writing by a Company Signatory

8.6.1.3 non-compliance with such design quantity measurement or specification

8.6.1.4 breach of a written warranty signed by a Company Signatory that the Goods are fit for that purpose; or

8.6.1.5 a claim maintainable against Us pursuant to Clause 8.1 of these Terms

8.6.2 You will unconditionally fully and effectively indemnify Us against all loss damages costs on an indemnity basis and expenses awarded against or incurred by Us in settlement of any claim for infringement of any patents copyright design trademark or any other industrial or intellectual property rights of any other person.

8.6.3 You will further unconditionally fully and effectively indemnify Us against all loss damages costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any other claim arising from any such manufacturing processing or milling including but not limited to any Defect in the Goods. This indemnity will be reduced in proportion to the extent that such loss damages costs and expenses are due to our negligence.

8.7 You will unconditionally fully and effectively indemnify Us against all loss damages costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim by any third party arising from the supply or use of the Goods. This indemnity will be reduced in proportion to the extent that such loss damages costs and expenses are due to our negligence.

8.8 Without prejudice to any other provisions in these Terms in any event our total liability for any one claim or for the total of all claims arising from any one act of default on our part (whether arising from our negligence or otherwise) shall not exceed the purchase price of the goods the subject matter of any claim.

9. NON-PAYMENT/INSOLVENCY

9.1 "Insolvent" means You becoming unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986; the levying or the threat of execution or distress on any of your property; the appointment of a receiver of administrative receiver over all or any part of your property; a proposal for voluntary agreement or compromise between You and your creditors whether pursuant to the Insolvency Act 1986 or otherwise; the passing of a resolution for voluntary winding-up or summoning a meeting to pass such a resolution otherwise than for the purposes of a bona fide amalgamation or reconstruction; the presentation of a petition for your winding-up or for an administration order in relation to You; if You suffer any analogous step or proceedings under foreign law or You ceasing or threatening to cease to carry on your business.

9.2 If You fail to pay the price for any Goods on the due date or fail to pay any sum due to Us under any Contract on the due date or You become insolvent or if You are a Limited Company or partnership and there is a material change in your constitution or You commit a material breach of this Contract and fail to remedy that breach all sums outstanding between You and Us shall become immediately payable and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have):-

9.2.1 require payment in cleared funds in advance of further deliveries

9.2.2 cancel or suspend any further deliveries to You under any contract without liability on our part

9.2.3 without prejudice to the generality of Clause 7 of these Terms exercise any of our rights pursuant the that clause.

9.3 If We reasonably incur any third party costs such as tracing or debt collection agency costs seek legal advice or take legal proceedings to enforce our rights as a result of your breach of this Contract including but not limited to recovery of any sums due, you will reimburse us such reasonable agency costs or legal costs incurred on an indemnity basis

10. GENERAL

10.1 This Contract shall be governed and interpreted accordingly to the Law of England and Wales and You agree to submit to the non-exclusive jurisdiction of the English Courts.

10.2 We shall not be liable for any delay of failure to perform any of our obligations in relation to the Goods due to any cause beyond our reasonable control including industrial action.

10.3 The waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provisions.

10.4 If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.

10.5 We may assign novate or sub contract all or part of this Contract and You shall be deemed to consent to any novation. This Contract is personal to You and it may not be assigned.

10.6 Nothing in this Contract is intended to or will grant any right to any third party to enforce any terms of this contract whether express or implied.