

# Daifuku Logan Ltd - Standard Terms & Conditions (DLL-066I)

## STANDARD TERMS AND CONDITIONS FOR SUPPLY AND INSTALLATION CONTRACTS – ENGLAND, SCOTLAND AND WALES - “THE CONSTRUCTION SCHEME”

### 1. DEFINITIONS

- 1.1 The Buyer means the person, firm or company placing an order with the Seller.
- 1.2 The Products means all goods, materials, plant, machinery, equipment and services to be sold to the Buyer under the Contract.
- 1.3 The Seller means Daifuku Logan Ltd and any of its trading divisions or subsidiaries.
- 1.4 The Contract means the contract created by the Seller's acceptance (in accordance with Clause 2.3) of the Buyer's offer subject to and including for the avoidance of doubt these terms and conditions.

### 2. FORMATION OF CONTRACT

- 2.1 All orders are accepted subject to these standard Terms and Conditions
- 2.2 In the event of any conflict between these terms and conditions and any terms and conditions, whether express or implied, incorporated or referred to in any communication from the Buyer then these terms and conditions shall prevail and the Buyer's terms and conditions shall be excluded in whole from the Contract.
- 2.3 There shall be no binding contract until the Seller accepts the Buyer's order by means of the Seller's written order acknowledgement signed by a duly authorised signatory of the Seller (the "Acceptance of Order"). The deposit thereof in the English mail shall constitute delivery. Deposit by the Seller of any funds given by the Buyer with the order shall not constitute acceptance by the Seller.
- 2.4 The Contract may not be modified, amended, rescinded or cancelled in whole or in part except as specified below or except by written agreement between the Buyer and the Seller.
- 2.5 The Contract constitutes the entire understanding between the Buyer and the Seller relating to its subject matter that there are no related understandings, statements, conditions, warranties, representations, promises, agreements or contracts.
- 2.6 The Seller's employees or agents are not authorised to make any representations, warranties or undertakings concerning the Products and, in entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, warranties or undertakings not expressly contained within the Contract.

### 3. SUPPLIES FOR DESIGNS AND TESTING

The Buyer shall promptly deliver to the Seller pre-paid and without charge, engineering information, samples and any other information or products required by the Seller for design testing and production purposes.

### 4. PRICE

- 4.1 Prices in the Contract are subject to change only if the Contract is changed by mutual agreement or if the date of delivery required by the Buyer is more than six months from the date of the Acceptance of Order. In the latter case, the price will be the Seller's current list price at the date of delivery of the Products.
- 4.2 Except where otherwise expressly agreed, prices are ex-works, exclusive of carriage, packing, Value Added Tax and any other duties or taxes and shall be calculated and paid in Sterling.
- 4.3 Except where otherwise expressly agreed, prices include electric motors and direct on-line starters (excluding mains isolators and fuses as appropriate). Electrical equipment is suitable for connecting to 3 phase, 50 hertz supply having voltage between 380 and 415 volts, with or without neutral line. Extra charges will be made for electric motors or direct on line starters outwith this specification.
- 4.4 Costs arising from specification changes or extras ordered by the Buyer subsequent to the conclusion of the Contract shall be chargeable in addition to the price, shall be invoiced separately, but shall be subject to the same terms and conditions as stated herein.
- 4.5 Where the Seller agrees to deliver the Products to the Buyer the Buyer shall, in addition to the price, be liable to pay the Seller's charges for packaging insuring and transporting the Products.

### 5. PAYMENT

- 5.1 Payment of any invoice must be made in full within 30 days of the date of that invoice.
- 5.2 The Buyer shall not later than five days after the date on which any payment:-
  - 5.2.1 becomes due from him; or
  - 5.2.2 would have become due if :-
    - (i) the Seller had carried out its obligations under the contract; and
    - (ii) no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contract

give notice to the Seller specifying the amount (even if it is zero) of the payment he has made or proposes to make, specifying to what the payment relates and the basis on which the amount is calculated. If the Buyer fails to issue the payment notice the Seller may issue a default payment notice setting out the sum to be paid and the calculation of that sum. The Seller is entitled to treat its invoice as being the default payment notice.

- 5.3 Time of payment shall be of the essence of the Contract.
- 5.4 Payment must be made when due, notwithstanding that property in the Products has not passed to the Buyer.
- 5.5 Where any account, or any part thereof, is overdue for payment the Buyer shall cease to be entitled to the benefit of any discount specified in the Contract and the Seller shall be entitled to charge interest, at the rate of three per centum per annum over the Barclays Bank plc base rate in force from time to time, on the amount due from the due date for payment until the actual date when payment in full, including interest, is received by the Seller, and such interest shall be charged as well after as before any judgement.
- 5.6 If the Buyer intends to withhold payment after the final date for payment of a sum due under the Contract the Buyer must issue a pay less notice to the Seller not less than seven days before the final payment date. This notice must specify:-
- 5.6.1 the amount proposed to be withheld from the Seller; and
- 5.6.2 the ground for withholding the amount stated.
- If there is more than one ground, the notice must give the details of each ground and the amount attributable to it.
- 5.7 Where any amount is due to the Buyer from the Seller under the Contract the Seller may set-off any amount due to the Seller from the Buyer under the Contract or under one or more other contracts, provided that it first issues a pay less notice in accordance with Clause 5.6 above.
- 5.8 Where the Buyer notifies the Seller in accordance with Clause 5.6 and the Buyer refers the matter to the adjudicator under Clause 13, if the adjudicator decides that the whole or part of the amount withheld should be paid by the Buyer to the Seller, the Buyer will pay the amount decided by the adjudicator not later than:-
- 5.8.1 seven days after the date of the adjudicator's decision; or
- 5.8.2 notwithstanding the pay less notice, the date which would have been the final date on which payment should have been made under the contract,
- whichever is the later.
- 5.9 It is hereby agreed that the Buyer is not bound by any statement or information given in the pay less notice given under Clause 5.6 in respect of any submission to the adjudicator under Clause 13.
- 5.10 If the Buyer fails to make timeous payment in accordance with the Contract and the pay less notice has not been given under Clause 5.6 then, in addition to any other remedies available to the Seller, the Seller may either suspend all further deliveries of the Products under the Contract until payment is made in full or, at its option, treat the Buyer as being in breach of Contract.
- 5.11 If the Buyer does not pay a sum due under the Contract by the final date for payment and no effective pay less notice has been given under Clause 5.6 the Seller may exercise his right to suspend performance of any or all of his obligations under the Contract by giving the Buyer at least seven days notice of the Seller's intention to suspend performance. Such notice must state the ground or grounds on which it is intended to suspend performance. If suspension occurs the Seller is entitled to claim lost time and the reasonable costs and expenses it incurs as a result of exercising its right of suspension.
- 5.12 The Seller's right to suspend performance ceases when the Buyer makes payment in full of the amount due under the Contracts.
- 5.13 The Seller, in its sole discretion, may require full or partial payment of the price prior to delivery or the provision of security for payment by the Buyer in a form acceptable to the Seller.

## **6. RISK**

- 6.1 The Products shall be at the Buyer's risk immediately on delivery in accordance with Clause 7, regardless of how freight is paid. Loss or damage to the Products after such delivery shall not relieve the Buyer of its obligations hereunder.
- 6.2 The Buyer shall from delivery assume all responsibility for, and all liability arising from, the possession, operation and use of the Products, whether such responsibility or liability arises through neglect or otherwise. The Buyer shall comply with all laws, regulations and other requirements governing the possession, operation or use of the Products and shall promptly pay any penalties imposed as a result of its failure so to comply. The Buyer shall indemnify and keep the Seller harmless against any and all costs, claims and liabilities caused by the possession, use or operation of the Products.
- 6.3 From the time at which risk passes under the provisions of Clause 6.1 until payment in full of all sums due to the Seller under the Contract, the Buyer shall keep the Products and the Seller's interest in them insured against fire and the risks of extended coverage under policies with such provisions for such amounts and by such insurers as shall be satisfactory to the Seller from time to time and shall furnish evidence of such insurance to the Seller in a form satisfactory to the Seller. The Buyer assigns (and directs any insurer to pay) to the Seller the proceeds of all such insurance payment and any premium refund. The Buyer also authorises the Seller to endorse in the name of the Buyer any instrument for the payment of such insurance payments and any premium refund and to apply such payments and refunds to any unpaid balance of the Buyer's obligations to the Seller, whether or not due, or to restoration of the Products, or both, returning any excess to the Buyer. The Seller is authorised, whether in the name of the Buyer or otherwise, to make, adjust or settle claims under, or to cancel any insurance required by this Clause 6.3 and shall incur no liability whatsoever on account of

its exercise of such rights. The Buyer shall furnish to the Seller or its assignee certificates of insurance of all policies required under this Clause showing that the Seller or its assignee is named as an additional insured therein. Such policies may not be cancelled without the prior written consent of the Seller.

## **7. RESERVATION OF TITLE AND MAINTENANCE OF THE PRODUCTS**

- 7.1 Property and title in and to the Products shall not pass from the Seller to the Buyer until all monies due by the Buyer (or any of its associated subsidiary or holding companies) to the Seller (or any of its associated subsidiary or holding companies) under the Contract and any other contract or arrangement between them, including any interest and charges, have been paid in full. Until such time as property and title in the Products passes to the Buyer, the Buyer shall hold the Products as the Seller's fiduciary agent and bailee and shall keep the Products separate from those of the Buyer and third parties and free from any lien, charge or encumbrance and properly stored, protected and insured and identified as the Seller's property.
- 7.2 Until such time as property and title in the Products passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Products to the Seller or its employees or agents or to enter upon any premises or property of the Buyer or any third party where the Products are stored and to repossess the Products.
- 7.3 The Buyer shall not be entitled to pledge, or in any way charge by way of security, any of the Products which remain the property of the Seller but, if the Buyer does so, all moneys owing by the Buyer to the Seller shall, without prejudice to any other remedy available to the Seller, forthwith become due and payable.
- 7.4 If the Buyer shall sell or dispose of the Products to any third party before all payments due under the Contract, have been paid in full, the Buyer shall not give any warranties or incur any liability on behalf of the Seller in connection with the sale or disposal of the Products and any proceeds resulting therefore (or claim thereto) shall belong to the Seller and shall be paid into a separate bank account, the details of which shall be given to the Seller, to the extent of sums due from the Buyer to the Seller in respect of the Products. The Buyer shall indemnify and keep indemnified the Seller against all and any costs, losses, damages or expenses which the Seller may suffer as a result of a breach of this Clause 7.
- 7.5 If the Products are used as a component in the production of other goods or as part of a mixture of other goods then such other goods shall belong to the Seller and shall be stored so as to be identifiable as such and the proceeds of sale or other disposal of such other goods shall belong to the Seller to the extent of all sums due from the Buyer to the Seller.
- 7.6 Until all payments due under the Contracts have been paid in full, the Buyer covenants:
- (i) that it shall maintain the Products in good condition and repair and not permit their value to be impaired;
  - (ii) that it shall defend the Products against all claims and legal proceedings by persons other than the Seller;
  - (iii) that it shall not sell, lease or otherwise dispose of the Products nor permit the Products to become part of other goods, products or property except as specifically authorised in the Contract or in writing by the Seller;
  - (iv) that it shall not permit the Products to be used in violation of any applicable law or regulation, nor permit the Products to be used in a manner inconsistent with coverage under any policy of insurance;
  - (v) that it shall pay all expenses and, upon request, take any action reasonably deemed advisable by the Seller to preserve the Products or to establish, determine priority of, perfect, terminate or enforce the Seller's interest in or rights under the Contract;
  - (vi) that the Products furnished hereunder shall be used primarily for business and will be kept and maintained at the Buyer's address and that such location shall not be changed without the prior consent of the Seller; and
  - (vii) that the Products shall at all times remain personal property and shall not become part of any realty or freehold.

## **8. INSURANCE**

From the time at which risk passes under the provisions of Clause 6, until title passes under Clause 7, the Buyer shall keep the Products fully insured against all risks, including, but not limited to, damage in shipment, until final payment is made, with policies payable to the Seller's benefit.

## **9. DELIVERY**

- 9.1 Unless otherwise specified on the Acceptance of Order delivery shall be made ex-works and it shall be the responsibility of the Buyer to arrange for collection of the Products.
- 9.2 Any delivery date specified in the Acceptance of Order shall not be of the essence of the Contract and is subject to receipt by the Seller of the samples and other engineering information described in Clause 3, and is subject to Clause 11. If such samples or other information are not furnished to the Seller within the time designated on the Acceptance of Order the delivery date will be extended for a period equivalent to the delay.
- 9.3 The Seller may deliver to and invoice the Buyer in advance of the scheduled delivery date may deliver by instalments and no failure by the Seller in respect of one or more instalments shall entitle the Buyer to treat the Seller as being in breach of the Contract as a whole. If delivery is delayed at the Buyer's request, the Seller may invoice the Buyer and payment shall become due as if delivery had been made on the date of such invoice.
- 9.4 Any receipt obtained by the Seller from the Buyer, or its employee or agent, accepting or taking delivery of the Products (or such part thereof as is indicated by the receipt) shall be conclusive evidence of delivery of those Products.

- 9.5 If the Buyer fails to take delivery of the Products (or any instalment thereof) on the due date, or to give adequate instructions to enable the Products to be delivered on the due date, the Seller may issue a written notice to the Buyer stating that risk in the Products shall be deemed to have passed to the Buyer on the date delivery was due. Thereafter the Seller shall store the Products at the Buyer's expense and, regardless of whether or not a written notice has been given to the Buyer by the Seller, the Buyer shall indemnify the Seller in respect of all losses, costs, claims, damages, and expenses incurred by the Seller arising as a result of the Buyer's failure.

## **10. TAXES**

The Buyer will promptly pay when due all taxes, duties, insurance, transport, storage and other charges upon the export, import, sale, purchase, ownership, possession or use of the Products. Prices quoted do not include any such taxes, duties or other charges and the Buyer agrees to indemnify, and keep indemnified, the Seller against any such taxes, duties or other charges imposed on the Seller. The Seller reserves the right to add the amount of any such taxes, duties or other charges paid by the Seller to the total purchase price to be paid by the Buyer.

## **11. DELAYS**

- 11.1 If the performance by the Seller of its obligations under the Contract is delayed or prevented due to any circumstance beyond its reasonable control which shall include, without prejudice to the generality of the foregoing, act of government, interruption of power supplies, failure of sources of supply, interference by a third party, industrial action or natural disaster ("circumstance of Force Majeure") the Seller shall be excused performance of such obligation for as long as and to the extent that the effects of the circumstance of Force Majeure shall continue and shall be granted a reasonable extension of time to complete performance of the Contract.
- 11.2 If the Buyer requests the Seller to interrupt or suspend performance prior to substantial completion or for any circumstance of Force Majeure the Seller shall stop work with reasonable promptness and shall at the Buyer's expense, box and store all special items and any standard items not immediately saleable. If the Buyer does not request performance to be resumed within 60 days after such stoppage, the Seller may deem such inaction to be repudiation or purported cancellation of the Contract by the Buyer and the Buyer shall then be obliged to reimburse the Seller for all its costs of performance (including, but not limited to, time spent, materials used and packing, storage and insurance costs) and the Seller shall, in addition, be entitled to damages in accordance with Clause 17 below.

## **12. PRODUCTS NOT CONFORM TO CONTRACT**

- 12.1 The Buyer shall be deemed to have examined the Products upon delivery thereof and to have satisfied itself that they conform to Contract. A claim that the Products are not in accordance with the Contract will not be accepted by the Seller unless notice in writing, specifying in reasonable detail the alleged default, is given to the Seller within 10 days of delivery of the Products (time being of the essence).
- 12.2 Failure to notify the Seller of the non-delivery of the Products within 10 days of the due date for delivery will release the Seller from liability for claims for non-delivery.
- 12.3 Any Products considered to be damaged or defective (together with their packaging materials) shall be retained by the Buyer intact as delivered for a period of twenty one days from notification of the claim to the Seller, within which time the Seller or its agents shall have the right to investigate the complaint and examine the Goods and, if possible, to remedy any defect. Any breach of this condition will release the Seller from any liability for the Products which are alleged not to conform to Contract.
- 12.4 If the Seller agrees with the Buyer that the Products are damaged or defective and that it is not possible to remedy any defect then the Seller shall, at its sole option, replace the Products or credit the Buyer accordingly.
- 12.5 The Seller shall have no liability to the Buyer in respect of damaged or defective Products and the Buyer shall be required to pay the full Contract price where:-
- (i) any claim made by the Buyer is not in accordance with these terms and conditions;
  - (ii) damage has been sustained after delivery of the Products;
  - (iii) the defects are caused by installation, operation or maintenance carried out other than in accordance with any instructions supplied orally or in writing with the Products or by wear and tear, accident or misuse, improper operation or neglect or if any adjustment, alteration or other work has been performed on the Products by any person other than the Seller or its employees or agents.

## **13. RESOLUTION OF DISPUTES**

- 13.1 If a dispute arises between the Seller and the Buyer under the Contract the dissatisfied party must notify the other party in writing of his dissatisfaction no later than four weeks after he became aware of the matter causing his dissatisfaction. Within two weeks of the notification of dissatisfaction the parties will meet in an attempt to resolve the matter.
- 13.2 Either the Seller or the Buyer may give written notice to the other at any time of his intention to refer a dispute to adjudication. The adjudicator will be nominated by mutual agreement of the parties within 7 days of the notice or in default of agreement be appointed by the President of the Chartered Institute of Mechanical Engineers on the referral of the dissatisfied party. The referring party must serve its referral notice within seven days of the appointment of the adjudicator.
- 13.3 The dissatisfied party will include with his submission all the information to be considered by the adjudicator. A copy of the submission pack will be sent to every other party to the dispute at the same time that it is sent to the adjudicator. All other information supplied by the dissatisfied party to the adjudicator will be copied to every other party to the dispute within fourteen days of the submission to the adjudicator.
- 13.4 Unless and until the adjudicator has given his decision on the dispute the Seller and the Buyer will proceed as if the dispute had not arisen.

- 13.5 The adjudicator will be required to act impartially. The adjudicator will be encouraged to take the initiative in ascertaining the facts and the law concerning the dispute. The parties will assist the adjudicator as required.
- 13.6 The adjudicator will be requested to reach a decision within 28 days of the referral of the dispute or such longer period as is agreed by the parties after the dispute has been referred. The adjudicator may extend the period of 28 days by up to 14 days with the consent of the party by whom the dispute was referred.
- 13.7 The adjudicator's reasons and decision are as an independent adjudicator and not as an arbitrator.
- 13.8 The decision of the adjudicator is binding on the Seller and the Buyer until the dispute is finally determined by legal proceedings or by the agreement of the parties. The decision of the adjudicator is enforceable as a matter of contractual obligation between the Seller and the Buyer and not as an arbitral award. The adjudicator shall have power to correct any clerical or typographical error in his decision within a reasonable time of the publication of his decision.
- 13.9 The adjudicator and any employee or agent of the adjudicator is not liable for anything done or omitted in the discharge or purported discharge of the functions as adjudicator unless the act or omission is in bad faith.
- 13.10 The reasonable fees of the adjudicator shall be paid by such party as the adjudicator determines and in the absence of such decision shall be borne equally between the parties.

#### **14. INSTALLATION AND SERVICE**

- 14.1 Installation services by the Seller are furnished only as expressly stated in the Contract.
- 14.2 Installation of Products shall be in accordance with the Seller's Installation Policy "Domestic" or "International" if a copy is attached to the Acceptance of Order and such attachment is noted on the first page of the Acceptance of Order.
- 14.3 Service work performed by the Seller (or any of its agents or independent contractors) is chargeable to the Buyer in accordance with the Seller's "Charge Service Policy" in force at the time the work is performed. A copy of the Policy now in force is attached to the Acceptance of Order for information only. It is the Buyer's responsibility to give responsible officials of the Seller prompt notification of any malfunctioning of the Products and of any requirement for service or repair.

#### **15. INTELLECTUAL PROPERTY**

- 15.1 The Buyer warrants that it owns or has authority to use (and to authorise the Seller to use as contemplated by the Contract) the intellectual property rights comprised in any products, designs, specifications or information furnished by it to the Seller and shall indemnify and keep indemnified the Seller against all claims, losses, costs and liabilities arising out of any breach of this warranty or any alleged infringement of patents, design rights, copyright confidential information or trademarks comprised in any products made to the Buyer's specifications, converted by the Buyer into another form, or designed to construct, handle, assemble or fill packages in accordance with the Buyer's specifications, and against all claims of contributory infringement resulting from the use or resale by the Buyer of the Products.
- 15.2 Subject to the provisions of Clause 15.1 above, the Seller will, at its own expense defend any action instituted by anyone against the Buyer for any alleged infringement of any United Kingdom patent relating to any of the Products. In the case of a final award of costs and damages in such an action, the Seller will pay such award; and if the use of the Seller's Products by the Buyer shall be enjoined in such an action, the Seller shall, in complete discharge of its obligations under this Clause and at its own option and expense, either (a) procure for the Buyer the right to use the Product, or (b) replace the Product with a non-infringing product, or (c) refund the purchase price of the product (less reasonable depreciation thereon) upon return of the Product to the Seller. The Seller will not be responsible for any compromise or settlement made without its written consent.
- 15.3 The foregoing states the entire liability of the Seller for patent infringement; and such liability shall not apply nor shall the Seller have any obligation whatsoever with respect to patent infringement if (a) the infringing Product shall have been made to the specifications of the Buyer or a third party, or (b) the infringement shall consist of the use of the Product for purposes other than those for which it has been sold by the Seller, or (c) the Buyer has not made all payments then due under the contract for sale or (d) the Buyer has not given the Seller immediate written notice of the institution of the action, transmitted to the Seller immediately upon receipt all processes and papers served upon the Buyer, permitted the Seller to defend the action through its own counsel, either in the name of the Buyer or in the name of the Seller, and given all such information, assistance and authority as has been requested by the Seller.

#### **16. WARRANTIES**

- 16.1 The Seller warrants to the Buyer that on delivery the Products manufactured by it will be reasonably free from defects in material and workmanship. The Seller shall discharge its liability under this warranty in full by repairing or replacing, at the Seller's option, any such Product (or part thereof) which is defective and which is returned, following prior written notice from the Buyer to the Seller's designated factory, transportation charges prepaid within one year of delivery provided that the Seller shall be under no liability under this warranty unless the Product (or part thereof) in question has been operated and maintained according to the Seller's instructions. The Seller shall have no liability under this warranty for any costs other than those of repair or replacement as specified in this Clause 16.1, nor shall the Seller be liable for any labour charges involved in removal or replacement of the defective products or parts thereof.
- 16.2 The warranty in Clause 16.1 above does not extend to Products not manufactured by the Seller (including, but not limited to motors, lubrication systems, electrical and electronic equipment, instruments, gauges, and switchgear) nor to ordinary maintenance parts (including, but not limited to brushes and brush tubes, belts and chains). The Seller's warranty with respect to such items is limited to the warranty obligations of its own suppliers (details of which will be supplied on request) and shall be subject to performance of such warranty obligations by its suppliers.
- 16.3 The Seller gives no warranties, express or implied, of satisfactory quality or of fitness for a particular purpose, or of any other kind, except those made in Clauses 16.1 and 16.2 hereof. In particular (but only to the extent permissible by law) except as expressly set out in the Contract, all conditions and warranties or other terms, which would otherwise be implied by statute or under the common law are

hereby excluded and except as expressly set out in the Contract the Seller shall not be liable for any loss or damage arising out of or in relation to the Products in any way whatsoever whether direct or indirect (including loss of profit and goodwill) and whether arising through negligence, misrepresentation, breach of any statutory duty or of any condition, warranty or other term (express or implied) of any contract or otherwise.

- 16.4 Without prejudice to Clause 16.3 the Seller shall under no circumstances be liable for any indirect, consequential or incidental loss or damages arising either from breach of any of the warranties contained in the Contract or from any other cause whatsoever.
- 16.5 The Buyer shall fully indemnify the Seller in respect of all actions, claims, demands, costs, charges or expenses arising from damage to or destruction of property, personal injury or death caused by the negligence of the Buyer, its servants, agents or subcontractors.
- 16.6 Nothing in the Contract shall have the effect of excluding or restricting liability for death or personal injury caused by the proven negligence of the Seller.
- 16.7 Nothing in the Contract shall have the effect of excluding or limiting liability under the Consumer Protection Act 1987 to a person who has suffered damage or injury caused by a defective product, or to a dependent or relative of such a person.

## **17. SELLER'S REMEDIES**

- 17.1 If after the date of the Acceptance of Order the Buyer should purport to cancel, repudiate, or unilaterally vary the Contract or any part of it (including, but not limited to, any change in the specifications of the Products, time of delivery or the form or method of delivery or payment) the Seller may hold the Buyer liable for damages consisting of the profit the Seller would have received from full performance by the Buyer together with all direct, indirect, consequential and incidental costs, damages and expenses arising from the acts of the Buyer (including all expenses incurred in stopping production or shipment and all commissions, storage charges, labour charges and return and re-sale expenses).
- 17.2 The remedy defined in Clause 17.1 shall be without prejudice to any other rights either at Common law or under statute, which the Seller may have against the Buyer in respect of breach of contract or otherwise.
- 17.3 No relaxation, forbearance or delay by the Seller in enforcing any of the terms and conditions of the Contract shall prejudice, affect or restrict the rights of the Seller nor shall any waiver by the Seller of any breach operate as a waiver of any subsequent or continuing breach.

## **18. TERMINATION**

- 18.1 Without affecting any other rights and remedies it may have, the Seller may terminate the Contract forthwith if:
- (a) the Buyer breaches any terms of, or purports to cancel, any contract with the Seller;
  - (b) the Buyer is unable to pay its debts within the meaning of s. 123 Insolvency Act 1986 or any statutory modification or re-enactment thereof or equivalent provisions in another jurisdiction or, if the Buyer is not a company, is unable to pay its debts within 21 days of demand;
  - (c) Any step, action, application or proceeding is taken by or in respect of the Buyer;
    - (i) in relation to the whole or part of its undertaking for:
      - (aa) a voluntary arrangement or composition or reconstruction of its debts; or
      - (bb) winding up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy;
    - (ii) in any jurisdiction to which it is subject (including, without limitation, one in which the Buyer is incorporated) which has an effect similar or equivalent to any of the events mentioned in Clauses 18(b) and 18(c)(i) above.
- 18.2 If the Seller terminates the Contract under this Clause, then without affecting any other rights and remedies it may have, all sums outstanding shall be immediately due and payable, the Seller may dispose of any Products as it wishes and the Buyer shall indemnify the Seller for any loss or expenses incurred by it in connection with the Contract.

## **19. DEFAULT**

If the Buyer defaults in any payment, or fails to perform or rectify the breach of any warranty, covenant or other obligation specified in the Contract, or ceases to exist or becomes insolvent or the subject of bankruptcy or insolvency proceedings, or in any manner jeopardises the Seller's interest in the Products, or in any warranty or representation made to induce the Seller to extend credit to the Buyer (whether under the Contract or otherwise) is false in any material respect when made, then:

- 19.1 all payments due under the Contract shall become immediately due and payable without notice or demand and the Seller, in addition to all its rights under the Contract, shall have all the rights and remedies available to it under English (or any other applicable) law.
- 19.2 the Seller may require the Buyer to assemble the Products and to make them available to the Seller at any such place as is designated by the Seller.
- 19.3 the Seller shall have the right, with or without prior notice to repossess the Products and to enter any premises in which the Products may be for the purposes of repossession.
- 19.4 the Seller may dispose of the Products and apply the proceeds of such disposal to all amounts outstanding under the Contract.

## **20. ENFORCEMENT OF THE SELLER'S RIGHTS**

The Buyer agrees to reimburse the Seller for any expense incurred by the Seller in protecting or enforcing its rights under the Contract including, but not limited to, all reasonable legal fees and expenses and all the expenses of taking possession, holding, preparing for disposition and disposing of the Products.

## **21. ADDITIONAL BUYER'S OBLIGATIONS**

- 21.1 Until all payments due under the Contract shall have been paid in full, together with any interest and all other sums due from the Buyer, the Buyer covenants that, unless the prior written consent of the Seller is obtained, the Buyer will not merge or consolidate with or into any other corporation or entity and will not sell, lease abandon or otherwise dispose of any franchisees or all or substantially all of its property, assets and business. It is understood the Seller will not unreasonably withhold its consent to any merger or consolidation or to any sale, lease or other disposition of property, assets or business which, in the judgement of the Seller, will not adversely affect the Seller's rights or security hereunder.
- 21.2 The Buyer will furnish to the Seller such financial statements, information and access to the books and records of the Buyer as the Seller shall reasonably request and shall take all such action as may from time to time be necessary to preserve its corporate existence, rights and franchises and to comply with the laws of England or with any other applicable law.
- 21.3 The Buyer shall promptly pay before any penalties accrue thereon all taxes, assessments, and other governmental charges imposed upon it or its property, except to the extent and for so long as the same are being contested in good faith and by appropriate proceedings, with adequate reserves provided.

## **22. INSPECTION**

Until all payments due under the Contract shall have been paid in full, together with any interest and all other sums due from the Buyer, the Buyer authorises the Seller to examine the Products supplied under the Contract at any reasonable time or times and the Buyer agrees that it shall assist the Seller in making any such inspections.

## **23. AUTHORITY OF THE SELLER TO PERFORM FOR THE BUYER**

If the Buyer fails to comply with any condition, warranty or other obligation arising under, or as a result of the Contract the Seller is authorised, but shall not be obliged, to take any such action as is necessary to comply with such condition, warranty or other obligation on the Buyer's behalf, including the payment of any amounts required under the Contract. The cost of any such actions by the Seller shall be payable by the Buyer upon demand with interest at 3% per annum above the Minimum Lending Rate of the Bank of England (to be calculated on a daily basis).

## **24. GOVERNMENT REGULATIONS**

The Seller shall perform and be liable for its obligations under the Contract only to the extent permitted by any applicable law or the regulations and policies of any appropriate Government agency. All relevant licences or other approvals shall be obtained by the Buyer and the Buyer hereby indemnifies and holds the Seller harmless from any costs, claims, damages or expenses which the Seller may incur because of the failure of the Buyer to obtain such licences or approvals.

## **25. ASSIGNMENT AND WAIVER OF DEFENCES**

The Contract is binding upon and shall inure to the benefit of the parties and their respective successors and assigns. The Seller may assign any of its rights and obligations under the Contract without the consent of the Buyer and the Buyer agrees that it shall not assert against any such assignee any claims or defences that the Buyer may have had against the Seller.

## **26. GOVERNING LAW**

The Contract shall for all purposes be governed and construed in accordance with the laws of England and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

## **27. SEVERABILITY**

If any provision (or part thereof) of the Contract shall be found to be invalid, ineffective or unenforceable, the invalidity, ineffectiveness or unenforceability of such provision (or part thereof) shall not affect any other provision (or the remainder of the provision of which such invalid, ineffective or unenforceable part forms part). Accordingly all provisions (or parts thereof) not affected by such invalidity, ineffectiveness or unenforceability shall remain in full force and effect.

## **28. DATA PROTECTION**

- 28.1 For the purpose of this clause "Personal Data" means information provided to the Buyer by the Seller or collected by the Buyer on behalf of the Seller in relation to this Agreement which relates to living individuals who can be identified from that information or from that information combined with other details in (or likely to come into) the possession of the Seller.
- 28.2 The Buyer shall comply with the "Data Protection Legislation" which for the purposes of this clause means any applicable laws or regulations relating to privacy or personal data including with effect from 25<sup>th</sup> May 2018 the provisions of the General Data Protection Regulation EU 2016/679.
- 28.3 The Buyer agrees that if it receives Personal Data from the Seller it shall take measures to ensure a level of security appropriate to the harm that might result from the unauthorised or unlawful processing of or accidental loss, destruction or damage to the Personal Data and the nature of the Personal Data to be protected.
- 28.4 The Buyer shall not disclose any Personal Data to any person for any reason or purpose whatsoever without the prior written consent of the Seller.

**29. HEADINGS**

The headings to the clauses in these General Terms and Conditions are inserted for convenience of reference only and shall not affect the construction thereof.