

**THE CUSTOMER SHOULD PAY PARTICULAR ATTENTION TO CONDITIONS 4, 5, 6, 8, 9, 10, 11 & 13****1. INTERPRETATION**

The following definitions, unless the context requires otherwise, and rules of interpretation in Condition 1 shall apply to these Conditions:

**Account:** the account (if any) provided to the Customer by the Company;

**Additional Terms:** any terms varying or adding to the Conditions that are included in the Order Acknowledgement, or otherwise agreed in Writing by the Company, including any agreed variations to the Order;

**Conditions:** these terms and conditions (as amended from time to time);

**Contract:** any contract between the Company and the Customer for the purchase of Goods by the Customer from the Company in accordance with and subject to the Conditions and Additional Terms;

**Customer:** the person, company or organisation that enters into a Contract, in accordance with and subject to the Conditions, to purchase Goods from the Company for business purposes;

**Delivery Note:** means the document provided by the Company to the Customer on delivery, which may or may not be signed, documenting what has been delivered to the Customer in accordance with Condition 4.4;

**Empties:** means the kegs, barrels, casks or other receptacles the Goods are delivered in that the Customer has agreed to return to, or make available for collection by, the Company as part of the Contract;

**Goods:** any goods the Company agrees to supply to the Customer under a Contract;

**Intellectual Property Rights:** all copyright and related rights, trade marks, trade names, domain names, goodwill and the right to sue for passing off or unfair competition and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and be granted renewals or extensions of, and rights to claim priority from;

**Order:** a request (written or oral) to purchase goods from the Customer to the Company or acceptance by the Customer of a quotation provided by the Company;

**Order Acknowledgement:** acceptance of an Order by the Company, which shall be made by the Company accepting the Order orally or commencing performance of the Order (whichever occurs earliest);

**Price:** is defined in Condition 7.1;

**Company:** H B Clark & Co. (Successors) Limited (CRN: 0130435) whose registered office address is at Westgate Brewery, Wakefield WF2 9SW; and

**Writing:** means any form of written communication including letter, email and other comparable means of communication.

1.1 References to the masculine include the feminine and the neuter, the singular include the plural and, in each case, vice versa. Reference to a statute or statutory instrument is a reference to it as it is in force for the time being and includes reference to any amendment, extension, application or re-enactment and includes any subordinate legislation made under it.

1.2 Any words following the terms **including**, **include**, **in particular**, **particularly**, **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.

1.3 Headings shall not affect the interpretation of the Conditions.

**2. APPLICATION OF TERMS**

2.1 Subject to Condition 2.2, the Conditions and any Additional Terms apply to all Contracts to the exclusion of all other terms and conditions. No terms or conditions of the Customer (whether endorsed on, delivered with, or contained in the Customer's purchase order or other documents) shall form part of any Contract and any attempt by the Customer to exclude, vary or limit any Conditions or Additional Terms without the express agreement of the Company in Writing shall be void.

2.2 Any variation to the Conditions shall have no effect and shall not form part of the Contract unless agreed in Writing by the Company.

2.3 The Company's employees or agents are not authorised to make any representation concerning the Goods unless confirmed by the Company in Writing. In entering the Contract, the Customer acknowledges and accepts that it does not rely on, and waives any claim for breach of, any such representations that are not so confirmed.

2.4 The Company may provide the Customer with an oral or written quotation. A quotation so provided is an invitation to treat by the Company to supply the goods set out in the quotation, subject to the Conditions, to the Customer. Unless stated otherwise in the quotation, a quotation is valid for 30 days from its date provided that the Company has not previously withdrawn it.

2.5 The placing of an Order by the Customer shall be deemed to be an offer, subject to the Conditions, to purchase the goods stated therein from the Company. No Order placed by the Customer shall be deemed to be accepted by the Company, and no binding Contract will come into existence, until the Company provides an Order Acknowledgement.

**3. DESCRIPTION**

3.1 The quantity and description of the Goods is set out in the Company's quotation and/or Order Acknowledgement and the Contract.

3.2 All descriptions, drawings, specifications, technical data and illustrations and any advertising or other materials issued by the Company, or contained in the Company's brochures or website, are approximations and for information purposes only, should not be relied on by the Customer as precise or construed literally and shall not form part of the Contract.

3.3 The Company reserves the right to change any descriptions, drawings, specifications, technical data, illustrations, brochures, advertising materials, its website and any other materials provided at any time without notice.

**4. DELIVERY**

4.1 Unless otherwise agreed by the Company, delivery of the Goods shall take place at the delivery address supplied by the Customer, as may be set out in the Account application form and/or the Contract ("Delivery Point").

4.2 The Company will endeavour to deliver the Goods to the Delivery Point by the date specified in the Contract or, if none is specified, within a

reasonable period of time. However, any such specified date is an estimate only and it is expressly agreed that time for delivery shall not be, and shall not be made by notice, of the essence.

4.3 The Company will endeavour to deliver the Goods as near as possible to the Delivery Point as a safe hard road permits and will endeavour to unload the Goods to the location required by the Customer, but the Company reserves the right to refuse to deliver the Goods at the Delivery Point or unload the Goods to the location required by the Customer if the Company's driver or the carrier reasonably considers the Delivery Point or unloading location is unsuitable or unsafe for delivery to be completed, in which case the Company shall contact the Customer to make suitable alternative arrangements for delivery.

4.4 The Company's record of the delivery date and description of the Goods on the Delivery Note delivered to the Customer shall be conclusive evidence of such, unless the Customer can provide conclusive contrary evidence.

4.5 The Company may deliver the Goods by separate instalments, which shall be invoiced and paid for separately in accordance with the Contract. Each separate instalment shall, unless agreed otherwise in Writing, be deemed a separate Contract.

4.6 If the quantity of Goods delivered to the Customer is up to 5% more or less than the quantity ordered the Customer must notify the Company, is not entitled to reject all or any of the Goods for this reason and shall, unless agreed otherwise by the Company, pay for any surplus or shall be issued with a credit note for any shortfall at the pro rata Contract rate.

4.7 If for any reason the Customer fails to accept delivery of any of the Goods when the Goods are delivered to the Customer, or within 24 hours of notification that the Goods are ready for delivery, wishes to delay delivery, the Company is unable to deliver the Goods because the Customer has not provided appropriate instructions, access, documents or authorisations or Condition 4.3 applies, the Company may store the Goods until actual delivery, whereupon the Customer shall be liable for all related costs and expenses (including storage and insurance costs), in accordance with Conditions 7.4 and 7.5.

4.8 If the Customer has not taken/accepted delivery of the Goods within 20 days of notification that the Goods are ready for delivery, the Company shall be entitled to resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage, insurance and/or selling costs, account to the Customer for any excess over or charge the Customer for any shortfall in the Price.

4.9 Subject to the other Conditions and unless agreed otherwise by the Company, the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include loss of profits, loss of business, depletion of goodwill and any similar loss) costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, nor shall any such delay entitle the Customer to repudiate or terminate the Contract unless it exceeds 28 days and the delay is wholly and completely the fault of the Company.

4.10 The Company shall not be liable for delivering the wrong Goods or for non-delivery of or damage to the Goods (even if caused by the Company's negligence) unless the Customer notifies the Company in Writing within 48 hours of the actual delivery date.

4.11 The Company's liability under Condition 4.10, as a result of the Customer complying with the notice requirements, is limited to, at the Company's option, replacing or issuing a credit note for the Goods within a reasonable time.

4.12 If delivery of the Goods is accepted by the Customer and the Customer fails to notify the Company in accordance with Condition 4.10, the Customer shall not be entitled to reject the Goods, the Customer waives any claim in relation to the Goods and the Company shall have no liability for delivering the wrong Goods or for damage to the Goods (and the Customer shall be bound to pay the Price) as if the Goods had been delivered in accordance with the Contract.

4.13 The Delivery Note provided by the Company to the Customer, or its employees or agents actually accepting or taking delivery of the Goods, shall be conclusive evidence of delivery of the Goods, or such part thereof as is indicated by the Delivery Note, in accordance with the Contract by the Company, even if Condition 5.3(d) is not complied with, unless the Customer can conclusively prove otherwise within 7 days of actual delivery of the Goods.

**5. CUSTOMER'S OBLIGATIONS AND WARRANTIES**

5.1 The Customer warrants that it has the necessary authority to enter into the Contract. The Customer warrants that all the information provided to the Company, particularly that the terms of any Order (including any applicable specification), is true and accurate and acknowledges that the Company is relying on such information to perform its obligations under the Contract.

5.2 The Customer acknowledges that it is responsible for ascertaining the type, quantity and specification of the goods required for its purposes and that the Company provides no warranty (and none shall be implied) that the Goods are fit for any particular purpose.

5.3 The Customer agrees to co-operate fully with the Company and provide any assistance required to supply the Goods, in particular, the Customer agrees to do the following at its own expense:

(a) provide the Company with any reasonably necessary information relating to the Goods within a sufficient time to enable the Company to fulfil the Contract and provide any and all other information, co-operation and assistance reasonably required to enable the Company to perform the Contract;

(b) provide adequate and appropriate equipment and suitably trained and competent personnel at the Delivery Point to collect or unload/load the Goods at a reasonable speed (if applicable). If the Company's or its carrier's delivery vehicle is kept waiting for an unreasonable time, is unable to

- complete delivery (whether by virtue of Condition 4.3 or otherwise) an additional charge may be made pursuant to Condition 7.4; and
- (c) inspect and check the Goods on delivery to ensure that they conform to the Contract and the Customer's requirements; and
- (d) ensure an authorised representative of the Customer signs the Delivery Note on delivery to confirm that the Goods are as ordered and undamaged; and
- (e) take such steps as reasonably required to enable delivery of the Goods and ensure that all relevant laws and regulations, in particular relating to health & safety matters, are complied with to ensure safe delivery of the Goods and that the Company's employees, agents and sub-contractors are always subject to a safe working environment; and
- (f) return any and all Empties (which belong and shall belong to HB Clark, and/or their suppliers, throughout the Contract) the Goods are delivered to the Customer in once the Goods have been consumed, which the Company may otherwise charge the Customer for as an additional cost pursuant to Condition 7.4 or retain any deposit paid in respect of such (if applicable).
- 5.4 The Customer shall promptly notify the Company if any of the events in Condition 6.6 occur.
- 6. RISK/TITLE**
- 6.1 Risk in the Goods shall pass to the Customer when the Goods are delivered (or are deemed to be delivered by virtue of Condition 4) to the Delivery Point.
- 6.2 Subject to Condition 6.3, title in the Goods shall not pass to the Customer until the Company has received (in cash or cleared funds) from the Customer:
- (a) the full Price for the Goods plus VAT; and
- (b) all other sums that are due to the Company from the Customer under the Contract.
- 6.3 Subject to Condition 6.6, if the Customer incorporates the Goods into another product or resells the Goods prior to the passing of title in accordance with Condition 6.2, it shall do so in accordance with Condition 6.5 and title to the Goods shall pass from the Company to the Customer immediately before the time at which resale or incorporation into another product by the Customer occurs.
- 6.4 Until title in the Goods passes (as set out in Condition 6.2), the Customer shall:
- (a) store the Goods (at its cost) separately from all other goods of the Customer or any third party so they remain readily identifiable as the Company's;
- (b) not remove, destroy, deface or obscure any identifying mark or packaging relating to the Goods;
- (c) maintain the Goods in satisfactory condition, keep them insured on the Company's behalf for their full Price against all risks from the delivery date and provide the Company with a copy of the insurance policy on request;
- (d) notify the Company immediately if any of the events listed in Condition 6.6 occur or are reasonably likely to occur; and
- (e) give the Company such information relating to the Goods as the Company may require from time to time.
- 6.5 Subject to Condition 6.6, the Customer may only resell or use the Goods before title has passed if such sale or use is made in the Customer's ordinary course of business (but not otherwise) and on the Customer's own behalf acting as principal.
- 6.6 Without limiting any other right or remedy the Company may have, the Customer's right to possess, or resell or use the Goods, shall cease immediately if it:
- (a) has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager or administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer, or the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (b) the Customer suspends, ceases or threatens to cease to carry on all or substantially the whole of its business or the Customer suffers or allows any execution, sequestration or such other process to be levied on its property or obtained against it or encumbers or in any way charges any of the Goods; or
- (c) any event occurs or proceeding is taken, with respect to the Customer, in any jurisdiction to which it is subject that has a similar or equivalent effect to any of the events listed in Condition 6.6(a) and (b).
- 6.7 The Company shall be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Company to the Customer.
- 6.8 The Customer grants the Company, its agents and employees an irrevocable licence at any time to access (which shall include vehicular access) any site or premises owned, occupied or controlled by the Customer where the Goods are or may be stored to inspect the Goods or (where the Customer's right to possession has ended in accordance with Condition 6) to recover all Goods that have not been resold or irrevocably incorporated into another product.
- 6.9 If any of the events listed in Condition 6.6 occur (or the Customer reasonably believes any such event is about to occur and notifies the Company), before title to the Goods passes to the Customer then:
- (a) the Price (plus VAT) and any other Contract sums shall become immediately due and payable to the Company;
- (b) the Company shall be entitled to cancel the Contract or suspend further deliveries under the Contract without any liability; and
- (c) the Company may at any time:
- (i) require the Customer to deliver up all Goods in its possession or control that have not been resold or irrevocably incorporated into another product on demand; and
- (ii) if the Customer fails to do so promptly exercise its rights in Condition 6.8
- 6.10 If the Company repossesses any Goods or the Customer delivers up any Goods, in accordance with Condition 6 the Contract for those Goods shall be rescinded.
- 7. PRICE**
- 7.1 Unless otherwise agreed by the Company in Writing and subject to Conditions 7.2 and 7.3, the price for the Goods shall be the price stated in the quotation or Order Acknowledgement provided by the Company to the Customer in accordance with Conditions 2.4 and 2.5, together with any VAT and delivery costs ("Price").
- 7.2 The Price is based on the costs of materials, labour, sub-contracts, transport, taxes, duties and all other relevant costs at the date of the quotation and/or Order Acknowledgement and on the work being done in normal working hours.
- 7.3 The Company reserves the right to vary the Price, by giving notice to the Customer prior to delivery, to take account of any variation (howsoever arising) in these costs or the imposition of any new taxes or duties or any changes to the Contract between the quotation or Order Acknowledgement date and the delivery date.
- 7.4 In addition to the Price, the Customer shall pay for:
- (a) any increase in costs due to changes to the delivery date or address or to the quantity or specification of Goods required by the Customer; and
- (b) any additional work or costs as a result of the Customer providing inadequate or inaccurate instructions or information to the Company or as a result of the Customer failing to comply with any of the Conditions or any Additional Terms.
- 7.5 Any additional costs to the Price payable by the Customer under Condition 7.4 and/or the Contract will (at the Company's option) be invoiced by the Company at the time the work is carried out or as part of the Price in accordance with Condition 8.1.
- 8. PAYMENT**
- 8.1 The Company shall be entitled to issue an invoice for the Price any time prior to, on, or at any time after actual or deemed delivery. Payment shall be made by the Customer on or before the due date, notwithstanding the fact that delivery may not have taken place and/or title in the Goods may not have passed to the Customer. Receipts for payment shall only be issued if requested in Writing by the Customer. Any query or dispute in relation to an invoice or statement of account must be submitted by the Customer in Writing, with appropriate details, within 5 working days of the date of the invoice or the statement of account, failing which the Customer waives any right to query or dispute an invoice or statement of account.
- 8.2 For Account Customers within their credit limit each invoice submitted by the Company shall, unless other Account payment terms have been agreed in Writing by the Company, be paid by the 15<sup>th</sup> of the calendar month following delivery or the date of the statement of account (as applicable). Unless agreed otherwise in Writing, for Account Customers without a credit limit, or Customers with an Account that has reached its credit limit, the Price shall be paid at the time of the Order or as otherwise directed by the Company. Time for payment shall be of the essence.
- 8.3 The Company reserves the right, in its absolute discretion, to cancel the Account.
- 8.4 The Company reserves the right to suspend the Account if the credit limit is reached, the Customer is in breach of the Contract, or has failed to meet its payment terms, or if the Company decides, for whatever reason, that it requires security from the Customer, other than that already provided (if any), for the performance and discharge of the Customer's obligations under any Contract or for any other reason it considers reasonable. The Customer agrees to use its best endeavours to ensure that any additional security required by the Company (including, but not limited to, a third party providing a guarantee) is provided. The Company may decide to reinstate the Account if the Customer provides the security required or meets any other conditions required to be satisfied by the Company.
- 8.5 If the Company exercises its right to cancel or suspend the Account, in accordance with Conditions 8.3 and 8.4 respectively, all sums owed to the Company by the Customer at the date of cancellation or suspension shall be immediately due and payable, unless agreed otherwise by the Company, and the Company may continue trading with the Customer on the basis set out in Condition 8.2 for Account Customers without a credit limit, or Customers with an Account that has reached its credit limit.
- 8.6 No payment shall be deemed to have been received until the Company has received cash or cleared funds and all sums payable to the Company under a Contract shall become due immediately on its termination, howsoever arising. All payments shall be made to the Company as indicated on the Order Acknowledgement and/or invoice (the latter of which shall prevail) issued by the Company.
- 8.7 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order

- requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 8.8 Without prejudice to any of its other remedies, if any amount due from the Customer is not paid in accordance with the Contract the Company may do all or any of the following:
- suspend the Customer's account in accordance with Condition 8.4;
  - treat any or all Contracts as repudiated by the Customer;
  - without notice suspend or cancel delivery of the Goods under the Contract, and any other Contract, until the Customer pays the outstanding amount(s) in full;
  - appropriate any payment made by the Customer under any other Contract with the Company to pay for any outstanding amounts as the Company may, in its sole discretion, think fit;
  - charge interest at the annual rate of 8% above the base rate of Bank of England (a part of a month being treated as a full month for the purpose of calculating interest);
  - claim interest and/or compensation under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended);
  - invoice the Customer for any and all costs incurred by the Company recovering monies owed (including, legal costs on an indemnity basis).
- 8.9 On termination of the Contract, howsoever caused, the rights of the Company in this Condition 8 shall remain in effect.
- 9. CANCELLATION**
- 9.1 Unless agreed otherwise in Writing by the Company, the Customer is not entitled to cancel the Contract. If the Customer cancels the Contract (with or without the Company's consent/agreement) the Customer shall be liable to pay the Price and any other amounts due to the Company under the Contract in full (less any delivery and/or other charges if such are not applicable) unless agreed otherwise in Writing by the Company.
- 9.2 Any amounts payable by the Customer under Condition 9.1 shall, if not already invoiced by the Company, be invoiced by the Company within 14 days of the cancellation date and shall, unless directed otherwise by the Company, be payable by the Customer in accordance with Condition 8.
- 10. H B CLARK'S WARRANTIES**
- 10.1 Subject to Conditions 10.2 to 10.7, the Company warrants that the Goods shall conform in all material respects with their description and applicable specification under the Contract at the time of delivery and, unless otherwise agreed by the Company in Writing, the Company provides no other warranty in respect of the Goods. The Company will endeavour (but does not guarantee) to transfer the benefit of any warranty or guarantee for the Goods given to the Company by the relevant manufacturer to the Customer.
- 10.2 Subject to Conditions 10.3 to 10.7, if the relevant Goods do not conform with the warranty provided by the Company in accordance with Condition 10.1, or any other warranty provided in Writing by the Company in respect of the Goods, the Company shall, at its option, replace such Goods (or the defective part) or issue a credit note at the pro rata Contract rate to the Customer provided that the Customer:
- gives written notice of any breach of the warranty to the Company within 5 days of the time when the Customer discovers or ought to have discovered such; and
  - gives the Company a reasonable opportunity, after receiving the notice, to examine the relevant Goods and the Customer (unless agreed otherwise and subject to a reasonable handling charge in the circumstances for collection by the Company) returns the relevant Goods (or the relevant part) to the Company's premises at the Customer's expense.
- 10.3 If a manufacturer's warranty applies to the Goods and the Company has agreed to assist the Customer to make a claim under the warranty this will be subject to the Customer's compliance with the terms of the Contract, the manufacturer's warranty and any reasonable conditions/instructions imposed by the Company.
- 10.4 Condition 10.2 shall not apply if the defect arises as a result of normal use, the Customer's negligence or failure to comply with the Conditions or failure to follow the Company's, its suppliers' or the manufacturers' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice or the Customer makes any further use of the Goods after giving notice to the Company in accordance with Condition 10.2 or the Customer alters, modifies, mishandles or repairs such Goods or the Empties.
- 10.5 If the Company complies with Condition 10.2 it shall have no further liability for a breach of the warranty in Condition 10.1 in respect of such Goods. If delivery of the Goods is not refused by the Customer and the Customer fails to notify the Company in accordance with Condition 10.2 (a) the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or breach of warranty and the Customer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.
- 10.6 Any Goods that are returned by the Customer pursuant to Condition 10.2 shall belong to the Company. These Conditions shall apply to any replacement Goods supplied by the Company.
- 10.7 The Company's reasonable opinion as to the cause of the defect shall be final and binding unless the Customer can provide conclusive evidence to the contrary.
- 11. LIMITATION OF LIABILITY**
- 11.1 Subject to the other Conditions and provisions of the Contract, Condition 11 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, and sub-contractors) to the Customer in respect of any breach of the Contract and any representation, statement, tortious act or omission, including negligence, arising under or in connection with the Contract.
- 11.2 Subject to Conditions 11.3 and 11.4:
- The Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise (in each case whether direct, indirect or consequential) or any claims for indirect, special or consequential loss, damages or compensation whatsoever (howsoever caused) which arise under, out of or in connection with the Contract;
  - The Company's total liability in contract, tort (including breach of statutory duty or negligence), misrepresentation, restitution or otherwise arising under, out of or in connection with the Contract shall be limited to £20,000 or the Price (whichever is the greater).
- 11.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4 Nothing in the Conditions or Contract excludes or limits the Company's liability for death or personal injury caused by the Company's negligence or for fraud or fraudulent misrepresentation.
- 12. FORCE MAJEURE**
- 12.1 The Company reserves the right to defer the date of delivery of the Goods or cancel the Contract (in each case without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, labour disputes (other than in relation to the Company's own workforce), or restraints or delays affecting suppliers or carriers, or inability or delay in obtaining supplies of adequate quality, provided that, if the event in question continues for a continuous period in excess of 30 days, the Customer shall be entitled to give notice in Writing to the Company to terminate the Contract.
- 13. INDEMNITY**
- 13.1 The Customer shall be liable to pay the Company (on written demand) for, and indemnify (and keep indemnified) the Company against, all reasonable costs, expenses and losses sustained or incurred by the Company (including, but not limited to, any direct, indirect or consequential losses, loss of profit, loss of reputation, damage to property, loss of opportunity to deploy resources elsewhere and legal costs on an indemnity basis) arising directly or indirectly from the Customer's fraud, negligence or failure to comply, or unreasonable delay in complying, with any of the Conditions.
- 14. GENERAL**
- 14.1 If there are any differences between the information within the quotation and the Order Acknowledgement in respect of any Contract the latter shall prevail.
- 14.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 14.3 All Intellectual Property Rights in any documents or materials provided by the Company to the Customer under the Contract shall belong to the Company.
- 14.4 Except as permitted by law, the Customer shall not disclose any confidential information or commercial know-how (including pricing information and the terms of the Contract and Account) provided by or relating to the Company.
- 14.5 All amounts due to the Company from the Customer shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 14.6 If any Condition is found by any court to be wholly or partly illegal, invalid, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, unenforceability or unreasonableness be deemed severable and the remaining Conditions, and the remainder of such Condition, shall continue in full force and effect. In the event that such court decides that such Condition is not severable, the parties agree to substitute such Condition with a legal, valid, enforceable and reasonable Condition that achieves, to the greatest extent possible, the same commercial effect as the original Condition.
- 14.7 Failure or delay by the Company to enforce, or partially enforce, any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 14.8 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall be in Writing, shall not be deemed to be a waiver of any subsequent breach or default, and shall in no way affect the other provisions of the Contract.
- 14.9 No provisions of the Contract are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Contract.
- 14.10 All notices sent by the Customer to the Company must be sent to the Company at the relevant branch address (as set out on our website ([www.hbclark.co.uk](http://www.hbclark.co.uk)) or by email [contracts@hbclark.co.uk](mailto:contracts@hbclark.co.uk) or facsimile or as otherwise agreed by the Company. The Company may send notices to the Customer at the email or postal address, or by facsimile to the number, provided by the Customer to the Company.
- 14.11 All communications between the parties about the Contract, including any notices to be sent or received under the Contract, must be in Writing. Notices shall be deemed served on delivery if delivered by hand, 48 hours after posting if sent by post, and on completion of transmission if sent by email or facsimile.
- 14.12 The formation, construction, performance, validity and all aspects of the Contract shall be governed by the law of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.