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## TERMS AND CONDITIONS OF SALE

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### 1. INTERPRETATION

1.1. In this Agreement the following words and expressions shall mean:

<b>Company</b>	<b>Dawnthrive Limited</b> (Company Registration Number: 2026081), a Company incorporated in England, whose registered office is at 4 Winchester Road, Crampmoor, Romsey, Hampshire, U.K. SO51 9AL.
<b>Conditions</b>	Standard conditions of sale set out in this document and includes any Special Conditions annexed hereto;
<b>Contract</b>	The contract for the sale and purchase of the Goods;
<b>Goods</b>	All or any products or services (including any instalment of the goods or any part of them), which the Company is to supply in accordance with these Conditions;
<b>Purchaser</b>	The person/company whose order for the Goods is accepted by the Company;
<b>Special Order</b>	Any order for the Goods in respect of which the Company notifies the Purchaser, by way of an endorsement of an order acknowledgement or otherwise, that the Goods shall be supplied as a Special Order;
<b>Writing</b>	Facsimile transmission, e-mail, electronic data interchange, Web site and other comparable means of communication.

1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3. Words denoting the singular number only, include the plural and vice versa.

1.4. The headings used in these Conditions are for convenience only and shall not affect the construction thereof.

### 2. BASIS OF SALE

2.1. The Company sells and the Purchaser purchases the Goods in accordance with any written quotation of the Company which is accepted by the Purchaser or any written order of the Purchaser which is accepted by the Company subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions which the Purchaser applies or purports to apply to the Contract.

2.2. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Purchaser and a director of the Company.

2.3. The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in Writing. In entering into the Contract, the Purchaser acknowledges that it does not rely on any representations that are not so confirmed.

2.4. Any advice or recommendation given by the Company or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing

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by the Company is followed or acted upon entirely at the Purchaser's own risk, and accordingly the Purchaser acknowledges that it does not rely on and waives any claim for breach of any such representation which is not so confirmed.

- 2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

### 3. ORDERS AND SPECIFICATIONS

- 3.1. These Conditions shall apply to any quotation or order relating to the design, manufacture and/or supply of any Goods by the Company and to any Contract arising there from.
- 3.2. No order submitted by the Purchaser shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representatives.
- 3.3. The Purchaser shall be responsible for ensuring that the Goods to be supplied by the Company are fit for the purpose in which they are intended to be used and are fully compliant in form, fit and function with the Purchaser's technical requirements.
- 3.4. The Purchaser shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification or design) submitted by the Purchaser, and for giving the Company any necessary information relating to the Goods within sufficient time to enable the Company to perform the Contract in accordance with its obligations.
- 3.5. The quantity and description of the Goods to be supplied shall be those set out in the Company's confirmation in Writing sent pursuant to clause 3.2 hereof.
- 3.6. The Company reserves the right (but not so as to be obliged to do so) to make any changes in the quality or specification of the Goods which are required to conform with any applicable UK or EC statutory requirement or which do not materially impair the quality or performance of the Goods.

### 4. ALTERATIONS AND MODIFICATIONS

- 4.1. Where the Purchaser instructs the Company to make some alteration or modification to the Goods, the Company will accept such instructions and use reasonable endeavours to carry the same out but on the following conditions:
- 4.1.1. the Company, in following such instructions is deemed to have made no representation and gives no warranty as to whether the Goods can be altered or modified in accordance with the Purchaser's instructions;

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- 4.1.2. the Goods that are altered or modified pursuant to the Purchaser's instructions are excluded from the warranties given by the Company pursuant to these Conditions and in respect of such Goods, the Company shall be under no liability to the Purchaser whatsoever;
- 4.1.3. the Company shall be under no liability to the Purchaser in respect of such alterations or modifications and the same shall be carried out entirely at the risk of the Purchaser;
- 4.1.4. notwithstanding the fact that the Goods may prove to be defective following the alterations or modifications being carried out thereto, the Purchaser shall pay for the Goods pursuant to these Conditions;
- 4.1.5. the Company shall be under no liability to the Purchaser in respect of the Goods if following the alterations or modifications being made to them, the Goods are not fit for the purpose the Purchaser intended to put the Goods to.

### 5. PRICES

- 5.1. The prices of the Goods shall be those quoted specifically to the Purchaser by the Company. Where no price has been quoted, prices as listed in the Company's published price list current at the date of acceptance of the order will apply. Where the Goods are supplied for export from the United Kingdom the Company's published export price shall apply.
- 5.2. All prices contained in quotations, offers, acknowledgements of orders or elsewhere are subject to revision. Where the price stated in the quotation, offer or order acknowledgement for the Goods (or part thereof) is not in the currency of the Country of Origin of the Goods, the Company reserves the right to amend the price to the Purchaser to allow for variations in exchange rates between that quoted, offered or acknowledged and the currency in which the Goods were procured by the Company. At the time of invoicing a currency/exchange rate correction factor will be applied (if necessary) to the quoted or acknowledged price to take account of any change in the relevant exchange rate between the date of quotation, offer or order acknowledgement and despatch of the Goods to the Purchaser.
- 5.3. All prices quoted unless otherwise provided are valid for thirty days only or until acceptance by the Purchaser if sooner. The Company reserves the right, by giving notice to the Purchaser at any time before delivery, to increase the price of the Goods to reflect any increase in cost to the Company which is due to:
  - 5.3.1. any change in delivery dates, quantities or specifications for the Goods which is requested by the Purchaser, or any delay caused by instructions of the Purchaser or failure of the Purchaser to give the Company adequate information or instructions;
  - 5.3.2. any factor beyond the control of the Company (including but without limitation any foreign exchange fluctuations, currency regulations, alteration of duties, significant increase in the cost of labour and materials or other costs of manufacture).
- 5.4. Prices are exclusive of any value added tax, which the Purchaser shall be additionally liable to pay to the Company.

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- 5.5. Where carriage, insurance, storage or other charges are incurred by the Company (including any charges levied by the Company for 'inspection certificates', storage charges at the Company's own premises and/or handling charges in consequence of any act or omission of the Purchaser, its servants or agents or as a result of any special requirements or stipulations of the Purchaser not otherwise provided for in the Contract) are charged separately from the price, they shall be payable by the Purchaser as if they form part of the price.
- 5.6. In the event of the Purchaser varying any agreed call-off rate, the Company reserves the right to charge a price appropriate to the changed call-off rate.

### 6. PAYMENT

- 6.1. Subject to any special terms agreed in Writing between the Purchaser and the Company, the Company shall invoice the Purchaser for the price of the Goods at the time the order is received from the Purchaser.
- 6.2. The Purchaser shall pay the price of the Goods (less any discount to which the Purchaser is entitled, but without any other deduction) within 3 days of receiving the Company's proforma invoice ("the due date") unless otherwise agreed in Writing. Final acceptance of the Purchaser's order by the Company will not become effective until payment of the proforma invoice is received in full. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.3. Goods are not supplied on credit terms unless such terms have previously been agreed in Writing by the Company. The Company reserves the right to withdraw any such credit terms at any time.
- 6.4. Where, by special arrangement, goods have been supplied under the terms of post delivery invoicing the Purchaser fails to make full payment (including any Value Added Tax payable) by the due date all of the Company's invoices rendered (or to be rendered) to the Purchaser (whether in respect of the Contract or any other Contract between the Company and the Purchaser) shall become immediately due and payable to the Company. Without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 6.4.1. cancel the Contract or suspend any further deliveries to the Purchaser;
- 6.4.2. appropriate any payment made by the Purchaser to such of the Goods (or the goods supplied under any other contract between the Purchaser and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Purchaser); and
- 6.4.3. charge the Purchaser interest and compensation (both before and after any judgement) on the amount unpaid in accordance with the provisions of The Late Payment of Commercial Debt Regulations (2002).
- 6.5. All costs and expenses reasonably incurred by the Company in recovering monies due to it will be charged to and be payable by the Purchaser.

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### 7. DELIVERY

- 7.1. Delivery of the Goods shall be on an ex-works basis and shall be made by the Company despatching the Goods for delivery to the Purchaser at the delivery address notified to the Company at the time the order is placed.
- 7.2. Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed in Writing. The Goods may be delivered in advance of the quoted delivery date upon giving reasonable notice to the Purchaser.
- 7.3. Where the Goods to be delivered are in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more instalments shall not entitle the Purchaser to treat the Contract as a whole as repudiated.
- 7.4. If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Purchaser's fault, and the Company is accordingly liable to the Purchaser, the Company's liability for any loss, damage or expense incurred or suffered by the Purchaser shall be limited to the price of the goods not delivered.
- 7.5. If the Purchaser fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Purchaser's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:
- 7.5.1. store the Goods until actual delivery and charge the Purchaser for the reasonable costs (including insurance) of storage; or
  - 7.5.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the Contract or charge the Purchaser for any shortfall below the price under the Contract.
- 7.6. Where the Company arranges carriage and/or insurance of the Goods for transit to the Purchaser the Company shall be deemed to be acting solely as agent of the Purchaser and Sections 32(2) & (3) of the Sale of Goods Act 1979 shall not apply; and where the Goods are exported the Purchaser shall be responsible for complying with any legislation or regulations governing the importation of Goods into the country of destination and for the payment of any duties.
- 7.7. Call-off orders must be completed within 6 months from the date of first delivery. Only in exceptional circumstances will the Company agree to delay delivery of an order beyond the date agreed when the order is accepted. The Company shall have sole discretion in determining whether exceptional circumstances exist and whether to agree to delay delivery, and reserves the right to pass on to the Purchaser any extra cost involved.
- 7.8. Unless otherwise agreed in Writing the Company reserves the right to deliver up to 2% more or less than the total number of items stated in the Purchaser's order and such delivery shall satisfy the said order subject to an appropriate adjustment by the Company to the price payable for the Goods.

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- 7.9. Any claim by the Purchaser in respect of any alleged short delivery or discrepancy in delivery must be notified to the Company by notice in Writing by the Purchaser within 7 days of the receipt of the Goods. The Company will not accept any claim in respect of any alleged shortage or discrepancy after this time.

### 8. RISK AND TITLE

- 8.1. Risk of damage to or loss of the Goods shall pass to the Purchaser at the time of despatch from the Company's premises. This condition shall apply where the basis of the sale is made CIF or any delivery point in between.
- 8.2. Notwithstanding delivery and passing of risk in the Goods, or any other condition, property in the Goods shall not pass to the Purchaser until the Company has received cash of cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Purchaser for which payment is then due.
- 8.3. Until such time as property in the goods passes to the Purchaser, the Purchaser shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Company's property.
- 8.4. Notwithstanding that the Goods remain the property of the Company the Purchaser may use the Goods in the ordinary course of the Purchaser's business at full market value for the account of the Purchaser. Until property in the Goods passes from the Company the entire proceeds of sale or any insurance proceeds payable in respect of the Goods shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money.
- 8.5. The Purchaser's right to use the Goods shall automatically cease if a receiver manager or administrator is appointed over the assets undertaking or property of the Purchaser a winding up or Administration Order is made or petitioned against the Purchaser.
- 8.6. The Company shall be entitled to recover the invoice price (plus VAT if applicable) notwithstanding that property in any of the Goods has not passed from the Company.
- 8.7. Until such times as the property in the Goods passes to the Purchaser and are still in existence the Company shall be entitled at any time to require the Purchaser to deliver up the Goods to the Company and, if the Purchaser fails to do so forthwith, the Company shall be entitled upon reasonable notice to enter upon any premises of the Purchaser where the Goods are stored and repossess the Goods. In the event that the Goods are in the possession of a third party, the Purchaser shall use its best endeavours to procure the consent and co-operation of such third party to facilitate re-possession of the Goods by the Company.
- 8.8. The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Purchaser does so all monies owing by the Purchaser to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

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### 9. RETURNS

- 9.1. Where the Company accepts that it has supplied the wrong Goods (but not otherwise) the Company will issue return instructions and a reference number with which the Purchaser shall identify the relevant Goods before returning them to the Company. The Company will refund all reasonable costs incurred by the Purchaser in returning the Goods. In all other cases, returned Goods shall only be accepted by the Company by prior agreement and then only if return carriage is pre-paid by the Purchaser.

### 10. TECHNICAL DESCRIPTIONS

- 10.1. Whilst the Company takes every precaution in the preparation of its technical descriptions contained in quotations, offers, brochures, specifications and its other literature in writing, these documents are for the Purchaser's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

### 11. INTELLECTUAL PROPERTY

- 11.1. The specification(s) and design(s) of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Company.
- 11.2. While the Company is not aware that any of the Goods sold under these Conditions and/or the use thereof for their normal purpose infringes the patent or other proprietary rights of third parties in the United Kingdom or elsewhere, no warranty is given and no obligation or liability is accepted by the Company for any such infringement or any loss, damage or expense associated thereto.
- 11.3. Where any designs or specifications have been supplied by the Purchaser for manufacture or to the order of the Company then the Purchaser warrants that the use of those designs or specifications for the manufacture, processing, assembly, or supply of the Goods shall not infringe the rights of any third party.

### 12. WARRANTY AND GENERAL LIABILITIES

- 12.1. Subject as otherwise stated herein, the Company warrants that the Goods are free from significant defect in workmanship and materials at the date of delivery and for a period of 12 months thereafter. Where the Goods are not of the Company's manufacture, the warranty period and its terms shall be limited to such warranty as the Company receives from the manufacturer(s) of the Goods.
- 12.2. The Company's warranty shall be limited as follows:

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- 12.2.1. the Company's liability under warranty shall be limited to the supply of labour and materials to repair any defects in the Goods, or at the Company's option, to replace the defective Goods. The Company shall supply the said labour and materials free of charge, save for transport costs;
- 12.2.2. the Company shall have no liability in respect of any defect arising from (a) any drawing, design or specification supplied by the Purchaser or (b) fair wear and tear, wilful damage, negligence, failure by the Purchaser (or the Purchaser's customer) to follow the Company's instruction (whether written or verbal), misuse (including use of the Goods for purposes inconsistent with specifications express or implied), alteration, repair or incorporation of the Goods into another product without the Company's prior approval in Writing; and
- 12.2.3. the company shall have no liability if the Purchaser has not paid the total price payable for the Goods by the due date.
- 12.3. the above warranty is conditional upon the following:
- 12.3.1. notice of the defect must be delivered to the Company in Writing within 7 days of the date of delivery or where the defect was not apparent upon reasonable inspection on delivery, within 7 days of the discovery of the defect; and
- 12.3.2. where the defect is discovered (and notified to the Company) within 7 days of the date of delivery, the Purchaser must give the Company a reasonable opportunity to arrange for inspection of the Goods in the condition and location where they were delivered; or
- 12.3.3. where the defect is discovered at a later date, the Goods in question (a) must have been properly stored and/or operated by the Purchaser prior to the defect occurring, (b) must not have been subjected to abnormal use or any modification prior to the defect occurring, and (c) the Purchaser (at their expense) must return the Goods in question for inspection by the Company should the Company so request.
- 12.4. The above warranty will be void and the Company will not have any liability to the Purchaser where the provisions of clause 12.3 have not been complied with in full by the Purchaser.
- 12.5. The goods are sold on the basis that the Purchaser does not deal as a consumer (within the meaning of the Unfair Contract Terms Act 1977) and that the Purchaser has satisfied itself as to the suitability of the Goods for the use or resale by the Purchaser in accordance with the Purchaser's specialised knowledge and skill. Subject as otherwise 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.
- 12.6. Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Purchaser by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any direct, indirect, special or consequential loss or damage (whether for loss or profit, expenses incurred in the ordinary course of business or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its servants, employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Purchaser, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as otherwise expressly provided in the Conditions.

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- 12.7. The Company shall not be liable to the Purchaser in any way whatsoever or be deemed to be in breach of the Contract by reason of any delay in performing, or failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control.
- 12.8. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance, or requisition; acts, restrictions, bye-laws, prohibitions or measures of any kind on the part of any governmental or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; and/or power failure or breakdown in machinery.
- 12.9. In circumstances such as those in clause 12.8, delivery shall be suspended. The Company shall be entitled to cancel or rescind the Contract and shall not be liable for any loss or damage as a result of such cancellation or rescission. If the Goods cannot be delivered or collected within three months from the original delivery date, the Purchaser may, at its option cancel the Contract for the Goods (without liability to the Company), save that where the Goods have been specially obtained for the Purchaser and in the Company's reasonable opinion there is no readily available market for them, the Purchaser may not cancel the order and shall remain liable to pay the Company the full purchase price for the Goods.

### 13. HEALTH AND SAFETY AT WORK

- 13.1. The Purchaser shall be solely responsible for and shall indemnify and keep indemnified the Company against any loss, liability or expense arising directly or indirectly from the use of the Goods other than in accordance with the uses to which a competent engineer would put goods of that description and specification or which may be contained in literature supplied by the Company. It is a condition of any order that any information which may have been supplied by the Company about the use for which the Goods are designed and have been tested about the results of any relevant test and about conditions necessary to ensure that goods will be safe and without risk to health when properly used are publicised or displayed by the purchaser and that specification of goods contained in trade categories or circulars are made known by the Purchaser to those persons who will use the Goods.

### 14. UNDERTAKING

- 14.1. The purchaser undertakes that during the term of the Contract and thereafter it will keep confidential and will not use for its own purpose nor without the Company's prior consent in Writing disclose to any third party any information of a confidential nature regarding the Company and the Goods (including trade secrets and information of a commercial value) unless such information is in the public domain.

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### 15. ASSIGNMENT

- 15.1. The order or any right or rights of the Purchaser hereunder may not be assigned in whole or in part without the prior consent of the Company in Writing.

### 16. TERMINATION

- 16.1. The company may (without prejudice to any other rights it may have) by notice in Writing to the Purchaser terminate the Contract forthwith or suspend further deliveries of the Goods if:
- 16.1.1. the Purchaser commits any breach of any of the Conditions (including without limitation Conditions as to the time for payment of the purchase price) or of any other contract with the Company (save where the breach is capable of remedy and the Purchaser has remedied the same within 7 days of receiving notice in Writing from the Company requiring the same to be remedied); or
  - 16.1.2. the Purchaser makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - 16.1.3. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Purchaser; or
  - 16.1.4. the Purchaser ceases, or threatens to cease to carry on business; or
  - 16.1.5. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the purchaser and notifies the Purchaser accordingly.

### 17. CANCELLATION AND AMENDMENT OF ORDERS

- 17.1. Subject to sub-Clause 17.2 the Company shall only accept cancellation of orders upon receipt of an undertaking that the Purchaser will pay those costs arising out of the cancellation (which costs shall be determined by the Company and calculated with reference to the length of time between the cancellation date and the due delivery date and will include the total loss suffered by the Company).
- 17.2. Goods subject to Special Orders cannot be cancelled and the relevant Goods shall be delivered to the Purchaser. Payment of the full price for the relevant Goods shall be made to the Company in accordance with the Conditions notwithstanding any notice from the Purchaser cancelling or purporting to cancel a Special Order.

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- 17.3. The Purchaser shall indemnify and keep indemnified the Company against any loss, liability or expense whether arising directly or indirectly by virtue of any act, omission or default on the part of the Purchaser in connection with this provision.
- 17.4. In the event of any amendment(s) to an order, this must be authorised by the Company in Writing and a minimum notice period of 7 days must be given.

### 18. GENERAL

- 18.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice.
- 18.2. No waiver by the Company of any breach of the Contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other condition.
- 18.3. If any of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other Conditions and the remainder of the condition in question shall not be affected and the parties thereto shall negotiate the terms of the Condition so invalidated with a view to agreeing a revised and valid Condition.
- 18.4. It is not intended that any third parties should be entitled to enforce the terms of this agreement (unless otherwise expressly so provided) purely by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 18.5. The Contract shall be governed by the laws of England, and the Purchaser agrees to submit to the exclusive jurisdiction of the English courts.



**19-May-05**

Signature

Date

Name: **Bret Coombs**

Position: **Director of Operations**

Company stamp/seal:

