

TERMS OF SALE

1. INTERPRETATION

Certain words and expressions used in, and principles of interpretation applicable to, these terms are defined or set out in Clause 19 (Definitions), and if there is a conflict or inconsistency between any provision contained in these terms and any provision contained in an Order, except where provided to the contrary in the latter and subject to Clause 2.2, the Order prevails to the extent of the conflict or inconsistency.

2. ORDERS

2.1 Promotional Material

2.1.1 Any prices, charges, samples, drawings, descriptions, or advertising of or relating to goods available from the Seller issued or published by the Seller, including those contained in catalogues, brochures or on a website (all or any of these forms of communication being "Promotional Material"), are issued or published in order to give an idea of the goods described in them and the associated charges or prices (as appropriate), and they shall not form part of the Agreement or any other contract of sale of the Goods, or any agreement to sell the Goods, between the Seller and the Customer, or any collateral contract.

2.1.2 The Seller is not bound by, and hereby excludes liability for, any error in or omission from (other than a fraudulent one) Promotional Material which is manifest or which ought reasonably to be considered apparent to the Customer, and the Customer undertakes not to rely on any such error or omission, or to enforce rights or bring any claim against the Seller on the basis of the Promotional Material to the extent of such error or omission.

2.1.3 The Seller's employees or agents are not authorised to make any statement or other representation concerning the Goods unless confirmed by the Seller in writing, and the Customer undertakes not to rely on, and hereby waives any claim for breach of, any unconfirmed statement or representation which is not made fraudulently.

2.1.4 Any advice or recommendation given by the Seller or its employees or agents to the Customer as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon by the Customer entirely at the Customer's risk.

2.2 Rejection of Customer terms

The Seller is prepared to sell goods or to enter into an agreement to sell goods on the provisions of these terms only, to the exclusion of any terms which the Customer purports to apply, whether in a purchase order or otherwise, which are hereby rejected or (as appropriate) shall be excluded from the Agreement.

2.3 **Quotations**

- 2.3.1 A quotation or any similar communication by the Seller is not an offer to sell or supply any goods, unless it is in writing, expressly described as an offer, and signed by or on behalf of the Seller.
- 2.3.2 A quotation or any similar communication is valid only for the period stated in it, and in the absence of a period stated, for twenty (20) Business Days, and is subject to withdrawal or revision by the Seller at any time.

2.4 **Ordering procedure**

- 2.4.1 To order goods from the Seller, the Customer shall complete and send to the Seller in accordance with Clause 2.4.2 an order, which constitutes an offer from the Customer open for acceptance by the Seller for a period of twenty (20) Business Days, or such other period as the parties agree in writing (the "Offer Period"); the order shall be in the form the Seller requires.
- 2.4.2 The order shall be sent via e-mail to **info@pollite.com** or to the Seller's address at 38 Borough Road, Darlington, County Durham, DL1 1SW.
- 2.4.3 During the Offer Period, the Customer is not entitled to amend or cancel the offer.
- 2.4.4 Where the Seller accepts the Customer's offer, it shall notify the Customer within the Offer Period, or such other period as the parties agree in writing, and in default of the Seller doing so within that period, the Customer's order is hereby rejected.

2.5 **Nature of Orders**

Each Order gives rise to an Agreement, and each Agreement is separate from each other Agreement, except to the extent provided in the Agreement in question.

3. **SALE AND PURCHASE**

3.1 **Agreement to sell**

Subject to the Agreement, the Seller shall sell, and the Customer shall buy, the Goods.

3.2 **Substitute goods**

At any time before delivery of the Goods, the Seller may substitute the Goods with goods of equivalent specification.

3.3 **Relief events**

- 3.3.1 The Seller is discharged from performing the Agreement where, to the extent, and for so long as the following circumstances affect performance:

(a) Clause 17 (Force Majeure) applies, which shall apply accordingly;

- (b) the Seller has been provided with inaccurate, incomplete or misleading information;
- (c) the Customer is in breach of this Agreement; or
- (d) a sub-contractor of the Seller terminates or is in breach of a sub-contract.

3.3.2 Where Clause 3.3.1 applies, other than Clause 3.3.1(a):

- (a) the Seller shall notify the Customer as soon as reasonably practicable, and shall use its reasonable endeavours to continue to perform the Agreement but shall not be liable for any failure to do so (including any delayed or defective performance); and
- (b) the Customer shall reimburse the Seller on demand in respect of all incremental costs incurred by the Seller in performing the Agreement as a result, except in the case to which Clause 3.3.1(d) refers.

4. **PRICE**

4.1 **Payment**

- 4.1.1 The Customer shall pay the Price in full when due and without set-off or counterclaim in respect of any liability of the Seller.
- 4.1.2 Unless otherwise stated, all payments due under the Agreement are subject to the receipt by the payer of a valid value added tax invoice (or, where not appropriate, an invoice), and shall, unless otherwise agreed, be paid as follows:
 - (a) 50% of the Price is due on acceptance of the relevant Order; and
 - (b) the remainder of the Price is due on delivery of Goods as agreed.
- 4.1.3 Any amount due to the Seller is not to be taken to have been made or received for the purposes of the Agreement unless and until the amount is received by the Seller in cash or cleared funds.
- 4.1.4 The Price is exclusive of value added tax, which shall be added to the Price, and paid by the Customer in accordance with this Clause 4.1 (Payment).
- 4.1.5 Irrespective of whether any payment received from the Buyer is stated to refer to a particular invoice, the Supplier may appropriate such payments to any outstanding sums due from the Buyer.

4.2 **Default interest**

- 4.2.1 If the Customer fails to pay any sum due and payable under the Agreement by the due date, in accordance with Clause 4.2.2 from time to time shall accrue on the unpaid amount from the due date to the date of actual payment (after as well as before

judgment); interest shall be calculated on the basis of a year of 365 days and for the actual number of days elapsed, shall accrue from day-to-day, and shall be compounded each period of three (3) months determined from the due date.

4.2.2 For the purposes of Clause 4.2.1, the interest rate shall be four (4) per cent above the base rate of Lloyds TSB

4.2.3 Bank PLC from time to time.

4.3 **Expenses**

The Price is exclusive of the cost of delivery, including transport, packaging, insurance and any taxes, duties or surcharges, which shall be payable by the Customer in addition to the Price and due at the same time as the sum referred to in Clause 4.1.2(b).

5. **OWNERSHIP**

5.1 **Passing of title**

5.1.1 Ownership of the Goods passes to the Customer upon the Seller receiving payment in full of the Price, and all other amounts due to the Seller from the Customer from time to time (and not before).

5.2 **Retention of title and interim arrangements**

5.2.1 Until ownership of the Goods passes to the Customer, or (if earlier) the Customer exercises its rights under Clause 5.3 (Sale or use of the Goods) in relation to particular Goods (and, in that case, thereafter in relation to all (if any) other Goods), the Customer shall:

- (a) hold the Goods as the Seller's fiduciary bailee;
- (b) keep the Goods separate from all other goods held by the Customer and readily identifiable as the property of the Seller;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in a satisfactory condition, insured on the Seller's behalf for their full price against all risks; and
- (e) hold the proceeds of insurance referred to in Clause 5.2.1(d) on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn account.

5.2.2 The Seller may at any time recover Goods or resell them until they are owned by the Customer.

5.2.3 The Seller is entitled by its employees or other representatives to enter the premises of the Customer where the Goods are stored (or where the Seller has reasonable grounds to believe the Goods are stored) without notice:

- (a) for auditing the Customer's compliance with Clause 5.2.1; or
- (b) to recover the Goods under Clause 5.2.2,

and the Customer shall at the request of the Seller procure the right for the Seller, its employees and representative to enter any premises of any third party where the Goods are stored for either or both of these purposes.

5.3 **Re-sale or use of the Goods**

5.3.1 The Customer may resell the Goods and pass good title to its customers.

5.3.2 The Customer may incorporate the Goods into, mix the Goods with, or attach the Goods to, other goods, in which case, provided the Goods remain identifiable and severable, they remain subject to the terms of the Agreement.

5.3.3 Where any Goods or other goods which the Goods have been incorporated into, attached to or mixed with (provided that the Goods remain identifiable and severable) are sold by the Customer before ownership of the relevant Goods passes to the Customer:

- (a) the proceeds of sale which represent or are equivalent to the amount owed by the Customer to the Seller in respect of the relevant Goods shall be held by the Customer upon trust for the Seller, and paid into a separate bank account designated for that purpose; and
- (b) the Seller shall be entitled to trace the proceeds of sale into that bank account (or wherever the proceeds may in fact be located), and the Customer authorises the Seller to make enquiries of its bankers (or otherwise as appropriate) relating to those proceeds.

6. **DELIVERY**

6.1 **General**

6.1.1 The Seller shall deliver the Goods, and the Customer shall take delivery of them, in accordance with the Order and otherwise in accordance with this Clause 6 (Delivery).

6.1.2 It is a condition of the Agreement that the Customer receives or arranges for the receipt of the Goods when delivery is effected by the Seller and shall provide all necessary labour, materials and plant, prepare the site and procure all licences and other authorisations required for the Seller or the carrier (as appropriate) to effect delivery in accordance with this Clause 6 (Delivery).

6.1.3 The Buyer shall be responsible for any and all customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the delivery of the Goods.

6.1.4 The Seller reserves the right to refuse shipment of any order placed by the Buyer if the Buyer is in breach of clause 4 with respect to any order.

6.2 **Method of delivery**

Where the Order stipulates the method of delivery of the Goods, delivery shall take place on the earliest to occur of any one of the following, as appropriate to the provisions of the Order:

6.2.1 where the Goods are in the possession of the Seller as at the date of the Order or will come into the possession of the Seller before delivery, on the Seller:

(a) giving to the Customer, its nominee, or any other person having apparent authority to receive them on behalf of the Customer, custody of, or control over, the Goods, and in default of any such person being present at the relevant time, the Seller may effect delivery by leaving the Goods at the delivery address identified in the Order;

(b) agreeing in writing to hold the Goods on behalf of the Customer or its nominee; or

(c) giving any carrier engaged by the Seller (acting reasonably) custody of, or control over, the Goods for the purposes of carriage to the Customer;

6.2.2 where the Goods are in the possession of the Customer as at the date of the Order at such date; and

6.2.3 where the Goods are in the possession of a third party as at the date of the Order or subsequently come into the possession of a third party, on the third party acknowledging with the consent of the Seller that the Goods are held to the order of the Customer.

6.3 **Time for delivery**

6.3.1 Unless otherwise stated in the Order, all dates or other times for delivery of the Goods stated in the Order are estimates only, except the Seller shall use its reasonable endeavours to make delivery no later than the date or time stated, and in default of a date or time stated in the Order, the Goods shall be delivered within a reasonable time after the date of the Order, time for which is not of the essence.

6.3.2 Where the Order stipulates the date or time for delivery, and the Goods are delivered before that date or time, the Customer shall nevertheless accept delivery.

6.3.3 The Customer may not postpone the delivery of the Goods except with the prior consent in writing of the Seller.

6.4 **Delay**

The Seller shall have no liability for delay in delivering the Goods.

6.5 **Non-delivery due to Seller default**

Subject to Clause 14 (Liability), where the Seller fails to deliver the Goods as a result of an Event of Default, the Seller's liability is limited to the price incurred by the Customer in obtaining replacement goods of an equivalent or similar description and quality to the Goods at the lowest price, less an amount equal to the Price.

6.6 **Non-delivery other than due to the Seller**

Where and for so long as the Seller is discharged from its obligation to deliver the Goods, or the Customer is in breach of Clause 6.1 (General), the Seller may store the Goods, at the risk of the Customer, and the Seller's reasonable costs of doing so shall be added to (and form part of) the Price.

7. **RISK**

Risk of loss of or damage to the Goods passes to the Customer on delivery.

8. **QUALITY**

8.1 **Assurance of quality**

The Seller undertakes that, on the date of delivery, the Goods will comply with the Regulations and shall be in accordance with the Order in all material respects and free of material defects in materials and workmanship.

8.2 **Warranty**

The Seller warrants that the Goods shall remain free of material defects (as part of this, maintaining their structural integrity) for a period of ten (10) years from delivery.

8.3 **Exclusions**

The Seller is not liable under Clause 8.1 (Assurance of quality) or Clause 8.2 (Warranty), including to do any act set out in Clause 9.4 (Defective Goods), where a defect arises from any or all of the following:

8.3.1 fair wear and tear;

8.3.2 the Goods conforming with information, drawings or specifications supplied by or on behalf of the Customer;

8.3.3 alteration of the Goods (other than by or on behalf of the Seller);

8.3.4 repair of the Goods (other than by or on behalf of the Seller);

- 8.3.5 abnormal working conditions (including use of the Goods in wind speeds exceeding 100mph);
- 8.3.6 failure to follow or to follow fully the Seller's instructions (whether oral or written) or any requirements set out in the Operation and Maintenance Manual;
- 8.3.7 the Goods having been installed or connected other than in accordance with the Installation Manual;
- 8.3.8 wilful damage, misuse, or negligence.

8.4 **Installation Assistance**

- 8.4.1 The Seller may, if requested, provide, at the Customer's expense, advice and/or assistance reasonably required by the Customer in installing and/or connecting the Goods.
- 8.4.2 The Seller gives no warranty as to the accuracy or suitability of any advice or assistance provided pursuant to Clause 8.4.1. Any Loss incurred by the Customer as a result of its reliance on such advice or assistance shall be borne by the Customer.
- 8.4.3 In the event the provision of advice or assistance pursuant to Clause 8.4.1 requires any officer or employee of to be present at a location other than the Seller's premises, the Customer shall ensure that adequate insurance cover is in place to cover any work done by such officer or employee and with respect to the safety of such officer or employee.

8.5 **Manufacturer's warranty**

To the extent the Seller is able to do so without obtaining the consent of any third party, the Seller hereby assigns the benefit of any warranty or other assurance of quality applicable to the Goods or materials incorporated into the Goods issued by the manufacturer of them with effect from the date of acceptance of the Goods by the Customer or payment of the Price in full, whichever is the later.

9. **ACCEPTANCE**

9.1 **Duty to accept**

The Customer shall accept all of the Goods which meet the requirements of Clause 8.1 (Assurance of quality) in all material respects, and may reject or accept the Goods which do not do so, provided the breach is not so slight that it would be unreasonable for the Customer to reject the Goods.

9.2 **Acts or omissions constituting acceptance**

Without affecting acceptance of the Goods in accordance with applicable law, and subject to Clause 10 (Inspection), the Customer shall be taken to have accepted the Goods:

9.2.1 where the Customer asks for, or agrees to, their repair or replacement under Clause 9.4 (Defective Goods); or

9.2.2 the Goods are delivered to a third party under a sub-sale or other disposition.

9.3 **Rejection**

9.3.1 Any right of the Customer to reject the Goods is subject to Clause 9.4 (Defective Goods).

9.3.2 Where the Customer rejects Goods, the Customer shall in accordance with the Seller's instructions, and at the cost of the Seller, return the rejected Goods to the Seller, or make them available for collection by the Seller.

9.4 **Defective Goods**

9.4.1 The Customer is entitled by notice to the Seller to require the Seller to repair or replace Defective Goods, in which case the Customer shall in accordance with the Seller's instructions, and at the cost of the Seller, return the Defective Goods to the Seller, or make them available for collection by the Seller.

9.4.2 Subject to the Customer's right to reject the Goods in accordance with this Clause 9 (Acceptance), where Defective Goods are repaired or replaced under this Clause 9.4 (Defective Goods), the Customer's shall have no other claim in respect of a breach of Clause 8.1 (Assurance of quality) by the Seller in respect of defects revealed by the Customer's inspection or which ought reasonably to have been revealed by that inspection.

9.4.3 The Agreement applies to repaired or replaced Goods as it applies to the Goods, and the Seller shall acquire all right, title and interest in and to the original Goods to the extent replaced.

10. **INSPECTION**

10.1 **Inspection period**

The Customer has a reasonable period, not exceeding ten (10) Business Days after receipt of the Goods in which to inspect them against the requirements of Clause 8.1 (Assurance of quality) and to notify the Seller of the inspection undertaken, and (as the case may be) any defects revealed and whether the Goods are rejected in accordance with Clause 9.1 (Duty to accept).

10.2 **Consequences of failure to notify**

In default of a notice under Clause 10.1 (Inspection period) within the period to which Clause 10.1 (Inspection period) refers, notifying the Seller of any defects revealed by the inspection, the Customer is deemed to have accepted the Goods to the extent required by Clause 9.1 (Duty to accept).

11. **SELLER'S REMEDIES**

11.1 **Set-off**

11.1.1 The Seller is entitled from time to time without notice to the Customer both before and after demand to set-off against any amount:

- (a) held by the Seller and paid by or on behalf of the Customer, whether under the Agreement or otherwise, including the Price; or
- (b) due to the Customer from the Seller, whether in respect of any liability of the Seller under or in connection with the Agreement or otherwise, any Losses incurred or sustained by the Seller by reason of the breach of the Agreement by the Customer, or the negligence, fraud or wilful misconduct of the Customer.

11.1.2 Where the Seller holds amounts paid by or on behalf of the Customer for more than one purpose, the Seller is entitled to elect which amounts it exercises its rights of set-off against and the order in which it does so.

11.1.3 The Seller shall account to the Customer for the balance (if any) of the Price or other amounts paid by the Customer after exercising the Seller's rights of set-off under Clause 11.1.1.

11.2 **Suspension or stoppage of the Goods in transit**

Where the Customer fails to pay the Price in full on or before the due date, whether or not an Insolvency Event has occurred in relation to the Customer, the Seller is entitled to suspend or stop the transmission, and resume possession, of all or any of the Goods until payment is received, and the costs of the Seller doing so are for the Customer's account.

11.3 **Re-sale of the Goods**

11.3.1 The Seller is entitled to terminate the Agreement and re-sell the Goods (without being under a duty of care to the Customer in relation to the price of them) where the Customer:

- (a) fails to pay any of the Price in full when due;
- (b) fails to take delivery of the Goods in breach of Clause 6.1.2 (General); or
- (c) rejects the Goods in breach of Clause 9.1 (Duty to accept),

and the Seller shall give notice of its decision to re-sell or the re-sale of the Goods (as appropriate) as soon as reasonably practicable.

11.3.2 The Seller may exercise its right of re-sale notwithstanding ownership of the Goods has passed to the Customer; pending resale by the Seller, provided notice of the Seller's decision to do so has been given under Clause 11.3.2, the Customer shall not deal with,

agree to sell, sell, grant any charge or other encumbrance over or in respect of, or part with possession of, the Goods.

11.4 **Measurement of damages**

11.4.1 Subject to Clause 11.4.2, the following kinds of Loss if established to have been sustained or incurred by the Seller and caused by any breach of this Agreement by the Customer, any wilful misconduct, negligence or other tortious liability of the Customer in connection with this Agreement (including breach of statutory duty) or fraud by the Customer (each being a "Default") are recoverable from the Customer by the Seller:

- (a) Losses arising from the storage or carriage of the Goods or retaking possession of the Goods;
- (b) loss of profit on the sale of the Goods to the Customer;
- (c) Losses (including the cost of management time and the time of other staff) attributable to the investigation and rectification of the Default;
- (d) all Losses (including management time and time of other staff) wasted or rendered futile as a result of the Default.

11.4.2 Nothing in Clause 11.4.1 entitles the Seller:

- (a) to recover damages which would place the Seller in a better position than if the Default had not occurred; or
- (b) where the Seller has incurred or sustained Loss under more than one head of Loss referred to in Clause 11.4.1, to recover damages under more than one head of Loss where under any applicable law the Seller is required to elect which head of Loss to claim.

12. **TERMINATION**

12.1 **Termination for breach**

The Seller may by giving notice to the Customer terminate the Agreement as from the date of expiry of the notice if the Customer commits a breach of this Agreement which, in the case of a breach capable of remedy, is not remedied within thirty (30) Business Days after the Seller has given notice containing details of the breach, and requiring the breach to be remedied.

12.2 **Termination for Insolvency Event**

The Seller may at any time, by notice to the Customer, terminate the Agreement as from the date of expiry of the notice if an Insolvency Event occurs in relation to the Customer.

12.3 **Effects of termination**

- 12.3.1 Where the Seller terminates the Agreement, the Price and all other sums due to the Seller from the Customer under the Agreement shall remain payable by, and become immediately due from, the Customer.
- 12.3.2 Where the Customer terminates the Agreement, the Customer may:
- (a) accept, and request delivery of, the Goods, in which case the Price and all other sums due to the Seller from the Customer under the Agreement shall remain payable by the Customer and due in accordance with Clause 4.1 (Payment); or
 - (b) reject the Goods, in which case the Customer shall be liable for all costs incurred by the Seller in retrieving the Goods and, where the Goods are bespoke goods made in accordance with any information, drawing or specification supplied by or on behalf of the Customer, shall remain liable for the Price of such Goods that have, at the date of termination by the Customer, been made (which shall be due in accordance with Clause 4.1).

12.4 **Accrued rights and survival**

Termination of the Agreement does not affect:

- 12.4.1 the rights or liabilities of the parties which have accrued on or before termination; and
- 12.4.2 the continuance in force of Clauses 11 (Seller's remedies), 14 (Limitation of Liability) and 15 (Confidentiality), which survive termination of this Agreement.

13. **WARRANTIES**

Each of the Seller and the Customer represents, warrants and undertakes to the other that it has full power and authority to enter into and perform its obligations under this Agreement.

14. **LIMITATION OF LIABILITY**

14.1 **Event of Default**

The following provisions of this Clause 14 (Liability) set out the maximum liability of the Seller in respect of the following (each being an "Event of Default"):

- 14.1.1 a breach by the Seller of the Agreement, including any wilful or deliberate breach of contract; and
- 14.1.2 a tortious act or omission (including negligence), breach of statutory duty, or misrepresentation or misstatement, of the Seller in connection with the Agreement,

and nothing in the Agreement shall affect the liability of the Seller for death or personal injury, fraud, or any other liability to the extent it cannot be excluded or limited by law.

14.2 **Financial limitation**

The Seller's total financial liability for all Events of Default shall not exceed an amount equal to all amounts paid under the Agreement from time to time.

14.3 **Consequential Loss**

In no event shall the Seller be liable, whether for breach of contract, any tortious act or omission (including negligence) or otherwise, under or in connection with the Agreement for any Loss for which the Customer has assumed the risk under the Agreement, loss of profit, loss of reputation, loss of business, revenue or goodwill, anticipated savings, loss or damage to data, or for any consequential or indirect loss, and regardless of whether the loss or damage would arise in the ordinary course of events, is reasonably foreseeable, is in the contemplation of the parties, or otherwise.

14.4 **Exclusion of implied terms**

All warranties, conditions or terms not set out in this Agreement and which would otherwise be implied or incorporated into the Agreement by statute, common law or otherwise (other than as to title to goods) are hereby excluded except to the extent they may not be excluded or limited by law.

14.5 **No claims**

14.5.1 The Customer undertakes that it shall not bring any claim against any individual employee or officer of the Seller in respect of or relating to any Event of Default.

14.5.2 Each individual to which Clause 14.5.1 refers is a beneficiary under that Clause, and may enforce the benefit of it under the Contracts (Rights of Third Parties) Act 1999, except that the parties may rescind or vary Clause 14.5.1 without the consent of the relevant individual.

14.6 **Acknowledgement**

14.6.1 The Price is determined on the basis of the exclusions from and limitations of liability contained in the Agreement.

14.6.2 The Customer accepts that these exclusions and limitations are reasonable because of (amongst other matters) the likelihood that otherwise the amount of damages awardable to the Customer for an Event of Default of the Seller may be disproportionately greater than the Price.

14.6.3 The Seller is willing to arrange for additional insurance cover to enable the Seller to take on the burden of additional liability to the Customer provided that the Customer pays the Supplier a commensurately higher amount than the Price.

14.6.4 If the Customer wishes the Seller to obtain a quotation for additional insurance cover accordingly, the Customer shall notify the Seller as soon as reasonably practicable after the date of the Order.

15. **CONFIDENTIALITY**

15.1 **Undertakings of confidentiality**

15.1.1 Each party undertakes to the other in relation to the Confidential Information of the other:

- (a) to keep confidential all Confidential Information;
- (b) not to disclose Confidential Information without the other's prior written consent to any other person except those of its employees who have a need to know the Confidential Information;
- (c) not to use Confidential Information except for the purposes of performing its obligations under this Agreement (and, in particular, not use Confidential Information to obtain a commercial, trading or any other advantage); and
- (d) to keep separate from all other information all Confidential Information in its possession or control.

15.1.2 The provisions of Clause 15.1.1 shall not apply to Confidential Information to the extent that it is or was:

- (a) already in the possession of the other free of any obligation of confidentiality on the date of its disclosure;
- (b) in the public domain other than as a result of a breach of this Clause 15.1 (Undertakings of Confidentiality);
- (c) required to be disclosed:
 - (i) pursuant to applicable law, or the rules of any exchange on which the securities of a party are or are to be listed; or
 - (ii) in connection with proceedings before a court of competent jurisdiction or under any court order or for the purpose of receiving legal advice,

but only to the extent and for the purpose of that disclosure.

15.2 **Damages not an adequate remedy**

Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of Clause 15.1 (Undertakings of confidentiality) and accordingly a party will be entitled, without proof of special damage, to an injunction and other equitable relief for any actual or threatened breach of Clause 15.1 (Undertakings of confidentiality).

16. **FORCE MAJEURE**

- 16.1 The following provisions of this Clause apply where the Supplier is prevented, hindered or delayed from or in performing any of its obligations under the Agreement by a Force Majeure Event.
- 16.2 The Supplier's obligations under the Agreement shall be suspended for so long as the Force Majeure Event continues and to the extent the Supplier is so prevented, hindered or delayed.
- 16.3 As soon as reasonably possible after commencement of the Force Majeure Event, the Supplier shall notify the Customer of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event, and the effects of the Force Majeure Event on its ability to perform its obligations under the Agreement.

17. **RIGHTS OF THIRD PARTIES**

Except as provided in this Agreement, this Agreement does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it.

18. **GENERAL**

18.1 **Entire Agreement and amendments**

- 18.1.1 This Agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all representations, including all pre- contract misrepresentations and misstatements negligently or innocently made, agreements, negotiations or understandings between the parties, except that this Clause 18.1.1 does not affect the liability of either party for any fraudulent misrepresentation.
- 18.1.2 Each of the parties represents, warrants and undertakes that:
- (a) in entering into the Agreement, the party does not rely on any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in this Agreement; and
 - (b) it shall not claim any remedy in respect of statements, representations, warranties or understandings made or repeated in this Agreement or in relation to this Agreement, other than breach of contract, and which shall be to the exclusion of any other remedy in respect of such statements, representations, warranties or understandings upon which it may have relied in entering into this Agreement, whether for misrepresentation or otherwise.
- 18.1.3 An amendment to the Agreement is ineffective unless it is in writing, expressly purports to amend the Agreement and is signed by both parties.

18.2 Remedies in general

- 18.2.1 The rights and remedies of the Seller provided by the Agreement are cumulative and (unless otherwise provided in this Agreement) are not exclusive of any rights or remedies of the Seller provided by law or in the Agreement.
- 18.2.2 The rights of the Customer under the Agreement are the Customer's only rights relating to the subject matter of the Agreement, and are to the exclusion of any other rights of the Customer provided by law other than the right to claim damages for breach of contract.

18.3 Notices

- 18.3.1 Any notice to be given under this Agreement shall be in writing and shall either be delivered by hand or sent by first class pre-paid post (or in the case of overseas post, by airmail) or facsimile transmission. Delivery by courier shall be regarded as delivery by hand.
- 18.3.2 Notices shall be sent to the registered office or principal place of business in the United Kingdom of the relevant party to Agreement. Notices addressed to the Seller shall be marked for the attention of the seller at the correspondence address provided on the order
- 18.3.3 A notice shall be deemed to have been served:
- (a) if delivered by hand at the address referred to in Clause 18.3.2 at the time of delivery;
 - (b) if sent by first class pre-paid post to the address provided for by Clause 18.3.2, at the expiration of two (2) Business Days after the time of posting; and
 - (c) if sent by facsimile, at the time of completion of transmission by the sender.
- 18.3.4 If a notice would otherwise be deemed to have been delivered outside working hours (being 9.00 am to 5.00 pm) on a Business Day under the preceding provisions of this Clause 18.3 (Notices), it shall be deemed to have been delivered at the opening of such normal working hours on the next Business Day.
- 18.3.5 In proving service of the notice, it shall be sufficient to show that delivery by hand was made or that the envelope containing the notice was properly addressed and posted as a first class pre-paid letter or that the facsimile was despatched and a confirmatory transmission report received.
- 18.3.6 A party may notify the other of a change to its name, relevant person, address or facsimile number for the purposes of this Clause 18.3 (Notices) provided that such notification shall only be effective on:
- (a) the date specified in the notification as the date on which the change is to take place; or

- (b) if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is deemed to have been served, the date falling five (5) Business Days after notice of any such change is deemed to have been given.

18.3.7 For the avoidance of doubt, the parties agree that the provisions of this Clause 18.3 (Notices) shall not apply in relation to the service of any claim form, application notice, order, judgment or other document relating to or in connection with any proceedings.

18.4 **Waiver**

Any failure or neglect by the Seller to enforce any of the provisions of the Agreement shall not be construed nor deemed to be a waiver of the Seller's rights and does not affect the validity of the whole or part of this Agreement nor prejudice the Seller's rights; any waiver by the Seller of its rights under this Agreement does not operate as a waiver in respect of any subsequent breach.

18.5 **Invalidity**

If any provision of this Agreement is held to be illegal, invalid or unenforceable in whole or part, that provision shall to that extent be deemed not to form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall be unaffected.

18.6 **Assignment and sub-contracting**

The Customer shall not without the prior written consent of the other assign, transfer, charge, dispose of, deal with or subcontract its rights or obligations under the Agreement.

The Seller may assign its rights under the Agreement, including the right to receive the whole or part of the Price.

18.7 **No partnership**

Nothing in this Agreement shall or shall be deemed to create a partnership between the parties.

18.8 **Governing law**

This Agreement shall be governed by and construed in accordance with English law.

18.9 **Jurisdiction**

The courts of England and Wales shall have non-exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement.

19. **DEFINITIONS**

19.1 **Meanings**

In the Agreement, unless the context otherwise requires, the following definitions apply:

“Agreement”	the agreement between the Seller and the Customer comprised of the Order and these terms;
“Business Day”	Monday to Friday excluding public and bank holidays in England and Wales;
“Confidential Information”	in relation to the Customer or the Seller, all information and trade secrets relating to its business or customers which come into the possession of the other party pursuant to this Agreement, whether orally, or in documentary, electronic or other form;
“Customer”	the purchaser of the Goods under the Agreement, identified in the Order;
“Defective Goods”	any Goods which do not meet the requirements of Clause 8.1 (Assurance of quality) or in respect of which the Seller is in breach of Clause 8.2 (Warranty);
“Event of Default”	has the meaning given in Clause 14.1 (Event of Default);
“Force Majeure Event”	any event which is beyond the reasonable control of the Seller [or the Customer as appropriate], and which affects the Seller’s [or the Customer’s] performance, including acts of God, war, terrorism, fire, and natural disasters, including industrial action of the Seller’s staff;
“Goods”	the goods identified in the Order, or any of them;
“Insolvency Event”	each and any of the following in relation to a party: (a) any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of a party; (ii) the appointment of a liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of a party or any of its assets; (iii) the enforcement of any security over any assets of a party; or (iv) the attachment, sequestration, distraining upon or execution over or affecting any material asset of a party, which in any case is not withdrawn or dismissed as soon as reasonably practicable; (b) the party is unable to pay its debts as they fall due or is insolvent, or the other party perceives (acting reasonably)

	that to be the case; or
	(c) the party enters into a composition or arrangement with its creditors or any class of them;
“Installation Manual”	any manual supplied with a Good, setting out how such Good should be installed and/or connected;
“Loss” and “Losses”	includes all loss, damage, cost and expense;
“Operation and Maintenance Manual”	any manual supplied with a Good, setting out how such Good should be operated and maintained;
“Order”	a binding order, in the form the Seller requires, for the purchase of the Goods at the Price, placed by the Customer and accepted by the Seller;
“Price”	the price of individual Goods or Goods of a given description stated in the Order, and not the aggregate amount of all such prices;
“Regulations”	Part 6 (Frangibility) of the International Civil Aviation Organisation Aerodrome Design Manual and Federal Aviation Administration Advisory Circular No. 150/5345-45C on Low Impact Resistant Structures; and
“Seller”	Pollite Limited (CN 06856176) whose registered office is at 38 Borough Road, Darlington, County Durham, DL1 1SW, UK.

19.2 **References**

References to:

- 19.2.1 “Clauses” are to clauses of this Agreement;
- 19.2.2 a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it except that, as between the parties, no modification, consolidation or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, either party;
- 19.2.3 either party includes, where appropriate, persons deriving title under it;
- 19.2.4 “subsidiary” and “holding company” shall have the meanings given to them by section 1159 of the Companies Act 2006;
- 19.2.5 “includes” or “including” shall be construed without limitation to the generality of the preceding words;

19.2.6 any document (including this Agreement) or a provision of it shall be construed as a reference to that document or provision as amended from time to time by agreement between the parties in accordance with this Agreement; and

19.2.7 “writing” includes any method of reproducing words in a legible and non-transitory form, excluding e-mail; and

19.2.8 the singular includes the plural and vice versa.

19.3 **Headings**

The headings are for convenience only and shall not affect the interpretation of the Agreement.

Dated: 22/02/2012