

1. **Definitions**
 - 1.1 In these Conditions:
 - “**Bespoke Goods**” means Goods provided by the Company to the Buyer which have been produced, developed and/or modified in accordance with the Buyer’s instructions so that they are bespoke rather than standard Goods;
 - “**Buyer**” means the corporate entity, firm or person seeking to purchase Goods and/or Services from the Company;
 - “**Call-Off Goods**” has the meaning set out in condition 7.3;
 - “**Company**” means Encon Insulation Limited (registered number: 1377342);
 - “**Conditions**” or “**conditions**” means these terms and conditions; as amended from time to time in accordance with condition 1.5;
 - “**Contract**” means any contract for Goods or Services made between the Company and the Buyer in accordance with, and subject to, these Conditions;
 - “**Defect**” means (subject always to condition 13.2) a failure of the Goods to comply in all material respects with the Specification due to faulty design (except where the design is supplied by or on behalf of the Buyer), faulty materials or faulty workmanship;
 - “**Defective**” shall have a corresponding meaning;
 - “**Delivery Location**” means the Company’s premises or, if the Goods are to be delivered by the Company to another site, the location set out in the Order Acknowledgement;
 - “**Final Call-Off Date**” means the date set out in the Order Acknowledgement provided to the Buyer or, if no final call-off date is specified, the date 6 months from the date on which the Company accepts the Buyer’s order for the Call-Off Goods;
 - “**Goods**” means the products articles or things sold by the Company, or agreed to be sold by the Company, as confirmed in the Order Acknowledgement;
 - “**Insolvency Event**” means the Buyer becomes bankrupt or insolvent or takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court unless for the purposes of a solvent reconstruction), having a receiver appointed to any of its assets or ceasing to carry on business; or the Buyer’s financial position deteriorates so far as to reasonably justify the Company’s opinion that the Buyer will not be able to fulfil its payment obligations under the Contract;
 - “**Non-standard Goods**” means Goods which are not Bespoke Goods but which do not form part of the Company’s regular stock and which cannot easily be re-sold by the Company;
 - “**Order Acknowledgement**” means the Company’s acceptance of an order in accordance with condition 2, whether such acceptance is in writing or given orally (in the case of orders placed by telephone);
 - “**Quotation**” means the quotation provided by the Company (whether provided by the Company in writing or orally) to the Buyer following receipt of an expression of interest, setting out the pricing, quantity and description of any Goods and/or Services;
 - “**Services**” means any services provided by the Company, or agreed to be provided by the Company, to the Buyer as confirmed in the Order Acknowledgement;
 - “**Specification**” means the manufacturer’s or the Company’s standard specification (as applicable) for the Goods and/or any Services; and
 - “**Working Day**” means a day other than: a Saturday, Sunday or bank holiday or public holiday in England.
 - 1.2 A reference to a statute or statutory provision (including any subordinate legislation made under that statute or statutory provision) is a reference to law as amended, re-enacted or replaced.
 - 1.3 Any phrase introduced by the terms “including”, “include” or other similar expression shall be construed as illustrative only and shall not limit the sense of the words preceding those terms.
 - 1.4 The headings used in these Conditions shall not affect the interpretation of these Conditions.
 - 1.5 A reference to “in writing” includes emails.
 - 1.6 The Company may make changes to these Conditions from time to time and such changed Conditions shall apply to any and all contracts entered into by the parties after the date of the variation. The Company will inform the Buyer of the latest Conditions which are applicable to any orders for Goods and Services.
2. **The Contract**
 - 2.1 These Conditions shall be incorporated into each and every Contract made between the Company and the Buyer and shall apply to the exclusion of any terms or conditions put forward by or on behalf of the Buyer or which may otherwise be implied by law, trade custom, practice and/or course of dealing.
 - 2.2 Subject to condition 1.6, no variation or waiver of or addition to these Conditions, whether written or oral, shall have effect unless and until authorised in writing by a manager of the Company. The Buyer waives any right it may otherwise have to rely on any terms endorsed upon, delivered with or contained in any documents of the Buyer which are inconsistent with these Conditions.
 - 2.3 Quotations
Quotations and estimates, whether written or oral, submitted by the Company shall be deemed to be an invitation to treat and not an offer. Quotations remain valid for 21 (twenty one) days (subject to any earlier revocation by the Company), or any shorter period specified in a Quotation. The Buyer shall provide to the Company any and all information which the Company reasonably requests in order to complete a Quotation. It is the Buyer’s responsibility to ensure that any information it provides is accurate, correct and up to date.
 - 2.4 Orders
Any order given in respect a Quotation must state the date, the reference of that Quotation and address for delivery (where applicable). All Quotations are subject to these Conditions.
 - 2.5 An order constitutes an offer by the Buyer to purchase the Goods and/or Services in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the order, any Specification and the resulting Order Acknowledgement are complete, accurate and meet its requirements and that the Goods and/or Services are fit for the Buyer’s purpose and (as relevant) the environment in which they are to be utilised and/or installed. If the Buyer identifies an issue with the Order Acknowledgement, it must promptly notify the Company; where the Company agrees with the issue, the Company shall revise the Order Acknowledgement accordingly. Any and all guidance given by the Company and its representatives during the contracting process relating to the Goods and/or Services is simply for the Buyer’s information only and it may not be relied upon by the Buyer; it shall not form part of the Contract and it shall not detract or affect the Buyer’s obligation to ensure that the Goods and/or Services meet its requirements.
 - 2.6 An order shall only be deemed to be accepted by the Company as and when the Company issues an Order Acknowledgement, accepting the order, at which point the Contract comes into existence.
 - 2.7 Description of the Goods and/or Services
Any samples, drawings, descriptive matter and advertising produced by the Company, including any descriptions or illustrations in the Company’s catalogues, brochures and/or websites, are produced for the purpose of giving an approximate idea of the Goods/Services.
 - 2.8 None of the Company’s employees, agents, contractors or other representatives are entitled to make any representations about the Goods and/or Services unless those representations are subsequently confirmed in writing to the Buyer and signed by a branch manager of the Company. The Buyer confirms that it will not enter, and has not entered, into any Contract in reliance on such a representation which has not been confirmed in writing by the Company.
 - 2.9 Where Goods and Services are provided by the Company in circumstances which would give rise to a Construction Contract within the meaning set out in Part II of the Housing Grants Construction Regeneration Act 1996 (“**Act**”) then, in the event of a conflict of terms, the provision of that Act and the regulations made thereunder shall prevail over the conditions set out herein to the extent necessary to give effect to that Act but not further or otherwise.
 - 2.10 For the purposes of the Contracts (Rights of Third Parties) Act 1999, these Conditions do not create any right or remedy enforceable by any person other than the Buyer and the Company. This condition does not affect any right or remedy of a third party that exists or is available apart from that legislation.
 - 2.11 Any Original Equipment Manufacturer (“**OEM**”) part numbers provided by the Company are given as a reference only, and no inference or implication beyond that of a useful reference for the manufacturer’s part number should be taken nor is intended.
 - 2.12 The Company shall not be obliged to accept any order from the Buyer, regardless of the Buyer’s agreed credit limit.
 - 2.13 Buyer’s Status
The Buyer confirms that it is acting in the course of a business and not as a consumer in entering into a Contract, as the Buyer acknowledges that the Company does not provide Goods or Services to consumers.
 - 2.14 Purchase Orders
Any purchase orders or other references provided by the Buyer, are only used by the Company and included in its documentation or communications with the Buyer, for the Buyer’s ease of internal reference. However, no such purchase orders or other references will operate to incorporate any other terms into the Contract, nor will they operate to replace the Contract whether in whole or in part.
3. **Goods and Services**
 - 3.1 The Company warrants that the Goods and Services to be supplied shall, subject to these Conditions, comply in all material respects with the Specification.
 - 3.2 The Company reserves the right to amend the Specification for the Goods and/or Services (including if required by applicable laws and regulations) and the Company shall notify the Buyer in such event.
 - 3.3 Any changes requested by the Buyer to the nature or quantity of the Goods and/or Services; timelines for delivery and/or delivery requirements are subject to the approval of the Company; where any changes are agreed and confirmed in writing by the Company, they shall be a variation to the Contract and shall entitle the Company to revise its pricing, delivery times and other Contract terms accordingly.
 - 3.4 The Company warrants that it shall provide the Services with reasonable skill and care.
 - 3.5 If the Company’s performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer:
 - 3.5.1 the Company (without limiting any of its other rights) may suspend the performance of the Contract until the Buyer remedies the issue, and rely on the Buyer’s default to relieve it from performance of the Contract to the extent that the Buyer’s default prevents or delays the Company’s performance;
 - 3.5.2 the Company shall not be liable for any losses, expenses or costs incurred by the Buyer as a result of such delays or the Company’s suspension; and

- 3.5.3 the Buyer shall reimburse the Company for any costs, expenses or losses sustained or incurred by the Company arising out of the Buyer's default.
- 4. Time Limits**
- 4.1 Any time or date quoted by the Company for delivery or collection of all or any of the Goods or performance of any Services is an estimate only, and the Company shall not be liable for any failure to meet any such estimate nor for any loss, whether financial or otherwise, resulting directly or indirectly therefrom. Time is not and shall not be of the essence in relation to the Contract nor the performance by the Company of any of its obligations under the Contract.
- 5. Collection and Delivery**
- Collection of the Goods
- 5.1 The Buyer shall (unless otherwise agreed with the Company as part of the order process) collect the Goods from the Company's premises. If the Buyer does not collect the Goods within 5 (five) Working Days of the agreed date for collection and/or the Buyer has not arranged a collection date within 5 (five) Business Days from the date on which the Company notifies the Buyer that the Goods are ready for collection, then condition 5.4 shall apply. All collections must be undertaken by or on behalf of the Buyer in compliance with the collection provisions notified to the Buyer by the Company.
- Delivery of the Goods
- 5.2 Where it is agreed that the Company shall deliver or procure delivery of the Goods, when ready, it shall do so at the risk and cost of the Buyer to such address in the United Kingdom as is set out in the Order Acknowledgement or, if no such address is specified then the Company will arrange delivery to any address of the Buyer (as determined by the Company) to which correspondence and/or Goods may previously have been sent under the Contract. The manner of delivery shall be such as the Company in its sole discretion shall deem appropriate. To assist in the delivery process the Buyer must, at the placement of its order at the latest, provide to the Company details of the relevant delivery site, any access restrictions and requirements to enable the Company to determine the delivery costs and times. The Order Acknowledgement issued by the Company shall be based on the delivery information given to it by the Buyer and, if there is any change to that information after that point, the Buyer must promptly inform the Company and the Company reserves the right to alter the delivery charges and/or dates as a result of those changes.
- 5.3 If the Company is unable to effect delivery on arrival at the Buyer's address or agreed delivery premises for any reason whatsoever, an additional charge for any return or subsequent visit will be payable by the Buyer.
- Failure to accept delivery or arrange collection
- 5.4 If the Buyer fails to: (i) collect the Goods in accordance with condition 5.1; or (ii) take delivery of the Goods within 5 (five) Working Days of the date notified for delivery of the Goods by the Company; then the Company shall be entitled: (i) to treat delivery as having taken place at 9am on the 5th (fifth) Working Day after the intended delivery or collection date (and risk in the Goods shall transfer to the Buyer); (ii) charge the Buyer for the costs of storing and insuring the Goods for every day over the intended delivery or collection date, and any and all relocation costs and attempted re-delivery costs (to the extent applicable); and/or (iii) to invoice the Buyer for the Goods, additional charges and any associated late payment interest. In such circumstances, the Company may also choose at its sole discretion to resell or otherwise dispose of the Goods and charge the Buyer for: (i) the shortfall it has received for them below the agreed price of the Goods; (ii) any costs which the Company has incurred in respect of its actions under this condition; and (iii) any late payment interest.
- Instalments
- 5.5 The Company has the right to deliver in instalments and each instalment shall be paid for separately by the Buyer. Any delay or Defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- Delivery Arrangements
- 5.6 Subject to condition 5.4, delivery of the Goods is deemed complete as and when the Goods are delivered by, or on behalf of, the Company to the agreed location. If the Company is responsible for delivering the Goods to a delivery site other than the Company's own premises, delivery shall only be deemed to have taken place as and when the Goods have been unloaded by the Company from the delivery vehicle in accordance with condition 5.7.
- 5.7 The Company is responsible for the safe offloading of the Goods from the delivery vehicle if it is arranging delivery of the Goods to a premises other than the Company's premises. If the Goods are to be collected by or on behalf of the Buyer from the Company's site, the Buyer (or its representatives, as relevant) shall be responsible for loading the Goods onto the collection vehicle.
- 5.8 The Buyer is also responsible for ensuring that a representative of the Buyer arranges for acceptance of delivery of the Goods, or collection of the Goods. The Company is authorised by the Buyer to assume that any individual who signs for the Goods (whether by way of a proof of delivery signature or otherwise) is authorised by the Buyer to accept delivery of them, or collect them.
- 6. Loss or Damage in Transit**
- 6.1 The Buyer is under a duty wherever possible to examine the Goods on delivery or on collection (as the case may be), including as against the delivery note.
- 6.2 Where the Goods cannot be examined the proof of delivery note or such other note (as the case may be) shall be marked by the Buyer at the time of delivery "not examined".
- 6.3 Subject to the Buyer's rights in condition 13.2, the Company shall be under no liability whatsoever for any defects or shortages unless the details are notified in writing to the Company within 14 (fourteen) days following receipt of the Goods (in which case the provisions of condition 6.5 shall apply. For the avoidance of doubt, the Buyer will only have a remedy under the Contract in respect of defects to the extent that they are Defects, and not any other defects with the Goods other than in respect of shortages). Consequently, the Buyer shall pay in full the applicable invoice in accordance with condition 9.
- 6.4 In all cases where Defects or shortages are complained of, the Company shall be under no liability to the Buyer in respect thereof unless a reasonable opportunity to inspect the Goods is provided to the Company by giving at least 48 (forty eight) hours' notice in writing before any use is made thereof or any alteration or modification is made thereto by the Buyer.
- 6.5 The Company shall replace any Defective Goods or shortages in Goods, in accordance with these Conditions as soon as reasonably practicable but otherwise (subject to condition 13) shall be under no liability whatsoever, whensoever or howsoever arising, whether by way of negligence or otherwise, for such Defects or shortages.
- 7. Cancellation by the Buyer**
- 7.1 No cancellation of the whole or any part of any order, whether it is an order by instalment or otherwise, by the Buyer is permitted except where agreed in writing in advance by a manager of the Company.
- Bespoke Goods
- 7.2 The Buyer shall not be entitled to cancel an order for or return any Bespoke Goods and/or Non-standard Goods. The Buyer must pay in full the charges for all Bespoke Goods and/or Non-standard Goods it orders.
- Call-Off Goods
- 7.3 If the Buyer purchases Goods on a call-off basis ("Call-Off Goods") then, if the Buyer fails to request delivery of some or all of the Call-Off Goods by the Final Call-Off Date and/or fails to pay all charges for all the Call-Off Goods:
- 7.3.1 the Company may invoice and the Buyer shall pay in accordance with condition 9 the charges for the remaining balance of the Call-Off Goods; and
- 7.3.2 the Company shall be entitled to deliver the remaining balance of the Call-Off Goods to the Buyer.
- Returning Goods
- 7.4 Subject to condition 6.5, Goods, once delivered, may not be returned unless authorisation has been given as specified in condition 7.1 and provided that the following conditions are satisfied:
- 7.4.1 Goods will only be accepted if they are in brand new and unused condition;
- 7.4.2 packaged items will only be accepted if the package remains unbroken and in reasonable condition; and
- 7.4.3 Goods will only be accepted if returned within 3 (three) weeks of the date of collection or delivery.
- 7.5 Where Goods are returned by agreement (other than pursuant to condition 6.5):
- 7.5.1 in every case a restocking charge will be made, such sum to be specified by the Company; and
- 7.5.2 in every case the invoice number and date together with reason for return must be stated.
- 8. Price**
- 8.1 Any price quoted by the Company is based upon current price ruling as at the date appearing on the Quotation, but the actual price to be charged to the Buyer under the Contract shall be based upon such ruling price (less any discount allowed by the Company) current as at the date of Order Acknowledgment. Consequently, the Company shall be entitled at any time up to the Order Acknowledgment to vary the price quoted to the Buyer. However, the price does not include the cost to the Company of any applicable carriage, insurance and/or storage effected by it in connection with the Buyer's order, which will be charged at standard rates incurred by the Company, and will be added to the invoice (for the avoidance of doubt, such charges will be in addition to those agreed in the Order Acknowledgment).
- 8.2 Unless otherwise expressly stated in writing, all prices are exclusive of, and therefore subject to the addition of VAT.
- 9. Payment**
- 9.1 The Company may submit interim invoices at intervals during the course of a Contract. The Company may submit its final invoice when the final Goods are delivered or Services performed. Subject to condition 9.2, the Buyer shall make payment in full and in cleared funds either immediately, or where permitted by the Company, by the last Working Day of the month following the month in which the invoice is dated. Time for payment under the Contract is of the essence.
- 9.2 If the Buyer has any queries or concerns in respect of an invoice issued by the Company, it shall notify the Company of such queries or concerns within 14 (fourteen) days from the date of the invoice, after which the Buyer will be deemed to have accepted the invoice and the invoice will be payable in full.
- 9.3 Any delay or default by the Buyer in making payment in accordance with condition 9.1 shall (without prejudice to any other rights of the Company) render all sums owing to the Company on any account whatsoever including the costs of recovery of such sums, due and payable forthwith without requirement for any notice to be given to the Buyer, and interest will be charged in accordance with condition 9.6 with immediate effect until the date of actual payment.
- 9.4 The Buyer shall not be entitled to withhold payment of any amount payable to the Company by reason of any dispute or claim by the Buyer (whether or not the Goods or Services are to be provided by instalments and in such case each instalment is deemed to constitute a separate and distinct Contract). In the case of any short delivery or delivery of damaged Goods to the Buyer, the Buyer shall remain liable to pay the full invoiced price of all other Goods delivered. The Buyer will then immediately make payment of any outstanding amounts in relation to the Goods which have been fulfilled (in the case of a shortage), or replaced (in the case of them being Defective).

9.5	Any sums not paid by the Buyer by the due date shall, notwithstanding and without prejudice to any other remedies of the Company, bear interest at the rate, and be subject to compensation for debt recovery costs, as specified in the Late Payments Commercial Debts (Interest) Act 1998.	12.3	On termination of a Contract:
9.6	The Seller may at its sole discretion and without notice from time to time adjust the Buyer's credit limit. The Buyer may at any time request the Seller to advise it of its current credit limit.	12.3.1	the Buyer shall immediately pay to the Company all of the Company's outstanding invoices; and
9.7	Any Buyer wishing to pay their account by card should note that card payments are subject to a 1% invoice surcharge.	12.3.2	the Company shall submit to the Buyer invoices for Goods and Services supplied but not yet paid for and such invoices shall be payable immediately on receipt.
10.	Risk	12.4	Termination of a Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination.
10.1	Except as otherwise stated in the Contract, risk in the Goods shall pass to the Buyer when the Goods are delivered by the Company to, or collected by, the Buyer or its agent.	13.	Warranty and Liability
11.	Title	13.1	Subject to condition 13.11, the liability of the Company is subject to compliance by the Buyer with all the terms contained in these Conditions.
11.1	Notwithstanding the passing of risk (whether under condition 10 or the other provisions of the Contract) and subject to condition 11.2, unless and until payment shall have been made to the Company of all sums due to it under the Contract and/or under any other Contract between the Buyer and the Company on any account whatsoever, property in and title to the Goods shall remain in the Company. The Buyer shall store the Goods separately from all other goods and products and in such a way that they can be readily identified as being the property of the Company. The Company may, at its election, notify the Buyer that it transfers title in any of the Goods to the Buyer ahead of payment.	<u>Warranty</u>	The Company shall make good by reimbursement of the respective part of the price (and, where relevant, as a deduction from any part of the price remaining unpaid) or at its option by repair or by replacement, any Defect developing under normal use in the Goods and due solely to faulty design (except where the design is supplied by or on behalf of the Buyer), faulty materials or faulty workmanship provided that:
11.2	Subject to conditions 11.3 and 11.4, the Buyer shall be free to sell the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Buyer resells the Goods before that time it does so as principal and not as the Company's agent; and title to those Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.	13.2.1	the Buyer shall be responsible for ensuring that Goods are fit for the purpose for which it wishes to use them and the Company gives no warranty or assurance (and none shall be implied) that the Goods are fit for any particular purpose;
11.3	The Company may at any time immediately revoke the Buyer's power of sale referred to in condition 11.2 by written notice to the Buyer if:	13.2.2	the Defect in question shall have appeared within 12 (twelve) months (or such longer time period (if any) as may be provided for in any guarantee given by or on behalf of the manufacturer of the specific Goods) after the Buyer shall have taken possession of the Goods or performance of Services has been completed and shall have been thereupon promptly notified in writing to the Company;
11.3.1	the Buyer shall be in default of the payment of any sum whatsoever due to the Company (whether in respect of the Goods or any other goods supplied by the Company or Services rendered, whether or not under the Contract by the Company or for any other reason whatsoever);	13.2.3	any Goods alleged to be Defective shall be stored in a safe place by the Buyer until such time as the Company authorises their disposal in writing;
11.3.2	if any payment to the Company by the Buyer is dishonoured; or	13.2.4	the Defect does not arise as a result of fair wear and tear, wilful damage, negligence, abnormal working conditions, nor use of the Goods for a purpose for which they are not suitable or otherwise intended;
11.3.3	if the Company in good faith shall have doubts as to the solvency of the Buyer.	13.2.5	any Goods alleged to be Defective shall, if so required by the Company, be promptly returned at the Buyer's risk and expense to the Company's premises for inspection, and the Company shall in its reasonable opinion determine them to be Defective;
11.4	The Buyer's power of sale referred to in condition 11.2 shall automatically cease if an Insolvency Event occurs.	13.2.6	no attempt shall have been made by the Buyer or by any third party to remedy any Defect; and
11.5	Upon determination of the Buyer's power of sale under conditions 11.3 or 11.4, the Buyer shall place the Goods at the disposal of the Company and the Company shall be entitled to enter upon any premises of the Buyer for the purpose of removing the Goods from the premises.	13.2.7	the Goods in question shall have been serviced and maintained properly and in accordance with the relevant manufacturer's recommendations and shall not have been fitted with any parts, components or accessories other than those manufactured or recommended by the manufacturer of the Goods in question.
11.6	The Company shall at any time be entitled to appropriate any payment made by the Buyer in respect of any Goods in settlement of such invoices or accounts in respect of such Goods as the Company may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Buyer.	<u>The Company's Liability</u>	Apart from such reimbursement, repair or replacement (in each case as referred to in these Conditions) the Company, its employees and agents shall be under no liability to the Buyer or to any third party for any injury, loss or damage of any kind whatsoever, howsoever and wheresoever arising or arisen, including without limitation any injury, loss or damage arising out of or incidental to:
12.	Termination and Suspension	13.3.1	any negligence of the Company or of any of its employees or agents (except insofar as such negligence may result in death or personal injury);
12.1	Without prejudice to any rights and remedies available to it, whether under the Contract or otherwise, the Company shall be entitled in its absolute discretion and upon giving to the Buyer written notice, either to terminate wholly or in part the Contract and/or any other Contract with the Buyer or to withhold, vary or suspend performance of all or any of its obligations under the Contract or any other Contract in any one or more of the following events:	13.3.2	the Company's performance of, or failure to, perform or breach of any of its obligations, whether express or implied under the Contract or otherwise;
12.1.1	if any sum owing to the Company from the Buyer on any account whatsoever shall be unpaid after the due date for payment;	13.3.3	the supply, installation, repair or maintenance of any of the Goods;
12.1.2	if the Buyer refuses to take delivery or collect any of the Goods in accordance with the terms of the Contract;	13.3.4	any Defect in any of the Goods and/or the Services;
12.1.3	if an Insolvency Event occurs;	13.3.5	any advice given or representation made by the Company or on its behalf; or
12.1.4	if the Buyer shall commit any breach of any Contract with the Company;	13.3.6	any performance of any Services.
12.1.5	if the Company in good faith shall have doubts as to the solvency of the Buyer;	13.4	Subject to condition 13.11, in the event of any claim against the Company in respect of any matter whatsoever, the liability (if any) of the Company shall be limited to (as determined by the Company in each case): repair or replacement of the Goods sold or re-performance of the Services performed by the Company in respect of which the liability arises.
12.1.6	where it is necessary to make alternative arrangements to deal with supply shortages. In such circumstances, the Buyer's obligation to purchase Goods hereunder shall remain binding to the extent that the Company meets the Buyer's order;	13.5	Subject to condition 13.11, the Company shall not be liable for any claim in relation to the Contract, brought after the expiry of the period of 12 (twelve) months from the date on which the Contract was made.
12.1.7	if the Buyer exceeds the credit limit agreed between it and the Company from time to time on any account. The Company shall be entitled to require as a condition of resuming performance under the Contract in such circumstances, the payment of such proportion of the sums or sum outstanding on any such account by the Buyer or such further sums as the Company sees fit in its absolute discretion to bring the Buyer back within its agreed credit limit; or	13.6	Subject to condition 13.11, the following types of loss are wholly excluded:
12.1.8	if the Buyer refuses to permit or hinders performance of Services.	13.6.1	loss of profits;
12.2	The Company shall be entitled to exercise its rights of termination or suspension hereunder at any time during which the event giving rise thereto shall not have ceased or been remedied, and in the circumstances of any such suspension, the Company shall be entitled to require as a condition of resuming performance under the Contract, pre-payment of, or such security as it may stipulate for the payment of, any sum or sums due or to become due to it. Upon any such event happening the Company shall also have a general lien over all monies and property of the Buyer in its possession for any sums due to the Company.	13.6.2	loss of sales or business;
	<u>Consequences of Termination</u>	13.6.3	loss of agreements or contracts;
		13.6.4	loss of anticipated savings;
		13.6.5	loss of use of information;
		13.6.6	loss of or damage to goodwill; and
		13.6.7	indirect or consequential loss;
			(in each case in respect of conditions 13.6.1 to 13.6.6 (inclusive), whether such losses are held to be direct, indirect, incidental, consequential or otherwise).
		<u>Entire Agreement</u>	This Contract (which also includes any of the Company's standard credit application terms) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. However, this Contract does not affect any other Contract.

- 13.8 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- Insurance
- 13.9 It shall be for the Buyer to insure against any liability arising from the performance of the Services and from its use of the Goods.
- Transfer of Guarantees
- 13.10 The Company shall use its reasonable endeavours to transfer to the Buyer the benefit of any guarantee in respect of the Goods available from the manufacturer provided that the Company may in its discretion, elect to do so only at the cost of the Buyer.
- Exclusions and limitations of liability
- 13.11 Notwithstanding anything to the contrary herein contained, nothing in the Contract limits nor excludes any liability which cannot legally be limited nor excluded, including liability for:
- 13.11.1 death or personal injury caused by negligence;
- 13.11.2 fraud or fraudulent misrepresentation;
- 13.11.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 13.11.4 defective products under the Consumer Protection Act 1987.
- 13.12 Subject to condition 13.11, the limitations and exclusions of liability in the Contract apply to all liability arising under or in connection with the Contract including liability in contract, statute, tort (including negligence), misrepresentation, restitution, a course of dealings or otherwise.
- 13.13 Subject to condition 13.11, to the extent that the Company is found liable for any financial amount, this will not exceed the amount agreed to be paid by the Buyer in respect of the Defective Goods or Services (as applicable) under the respective Contract.
- 13.14 Subject to condition 13.11 and the other provisions of the Contract, the Company's aggregate limit of liability in respect of all liability arising under or in connection with the respective Contract, shall not exceed the amount agreed to be paid by the Buyer under the respective Contract.
- 13.15 The provisions of this condition 13 shall survive any termination of the Contract.
- 14. Indemnity**
- 14.1 If any process is to be applied to the Goods or the Services by the Company in accordance with a specification, materials or direction (as the case maybe) submitted by the Buyer, the Buyer shall indemnify and hold harmless the Company from and against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement or alleged infringement of any intellectual property rights of any third party which results from the Company's use of the Buyer's specification or materials or from the Company complying with the Buyer's direction as the case may be.
- 14.2 Where the Buyer uses the Goods or the Services:
- 14.2.1 in the manufacture, supply or distribution of any other goods; or
- 14.2.2 in the provision of a service;
- the Buyer shall indemnify and hold harmless the Company from and against all loss, damages, costs and expenses awarded against or incurred by the Company in respect of such use by the Buyer arising out of the manufacture, supply or distribution of those other goods or the provision of that service; in each case, to the extent arising from a third party claim.
- 14.3 The Buyer shall indemnify and hold harmless the Company from and against all loss, damages, costs and expenses awarded against or incurred by the Company in respect of:
- 14.3.1 any liability which the Company may incur as a result of a claim against the Company by a third party under Part 1 of the Consumer Protection Act 1987;
- 14.3.2 any warranty howsoever given by the Buyer to a third party; and
- 14.3.3 any loss caused by the Goods during transit.
- 15. General**
- Data Protection
- 15.1 Both parties will, in connection with the performance of a Contract comply with all applicable laws relating to the protection of personal data. The Buyer is referred to the Company's privacy policy on its website (as such policy is updated from time to time by the Company) which sets out what personal data the Company collects as a result of the contracts and how that data is protected and used by or on behalf of the Company:
[<https://www.encon.co.uk/privacy-policy>]
- Confidentiality
- 15.2 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or any member of the group of companies to which the other party belongs except:
- 15.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with a Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this condition; and
- 15.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3 No party shall (without the prior written consent of the other party) use the other party's confidential information for any purpose other than to exercise its rights and to perform its obligations under or in connection with a Contract. The Buyer hereby agrees that the Company may disclose the Buyer's confidential information to a third party: (i) in order to seek trade references; (ii) to seek or verify the Company's credit insurance cover (in connection in the case of both (i) and (ii) with the Company's decision to supply Goods to the Buyer); and (iii) by way of a trade reference, if it requests that the Company do so.
- Force Majeure
- 15.4 The Company shall have no liability whatsoever for any failure to perform, or for any delay in the performance of any of its obligations under the Contract arising wholly or in part by reason of any factor beyond its direct control (so for the avoidance of doubt, but without limitation, the Company is not liable for any failures or delays relating to: epidemics or pandemics; fire, explosion or accident; any action taken by a government or public authority; any labour or trade dispute, strikes, industrial action or lockouts; non-performance by suppliers, subcontractors or transporters; interruption or failure of utility service). If this is attributable to the acts or omissions of the Buyer (or the Buyer's third parties), the Buyer shall reimburse the Company on demand for any and all costs and expenses which the Company incurs as a result of the Buyer's and/or its third parties' acts and/or omissions.
- Assignment and Transfers
- 15.5 The Buyer may not assign, delegate, mortgage, charge, sub-contract, declare a trust over or deal in any other manner with any or all of its rights and obligations under a Contract.
- Notices
- 15.6 Any notice required to be given in writing under the Contract shall be given either by fax transmission, email or by post addressed to the registered office of the party for which it is intended.
- Waiver
- 15.7 No failure or delay on the part of a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- Enforceability
- 15.8 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this condition 15.8, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- Governing Law and Jurisdiction
- 15.9 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract shall be governed by the law of England and subject to the exclusive jurisdiction of the English Courts.