

**TROLEX**

**TERMS +  
CONDITIONS  
FOR THE  
SUPPLY OF  
GOODS AND/  
OR SERVICES**



LEADING SAFETY TECHNOLOGY

The Customer's attention is particularly drawn to the provisions of **Clause 12** of these Conditions.

**1. Interpretation**

1.1 **Definitions.** In these Conditions, the following definitions apply:

<b>Business Day</b>	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
<b>Commencement Date</b>	has the meaning set out in <b>Clause 2.2</b> of these Conditions.
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with <b>Clause 15.8</b> of these Conditions.
<b>Contract</b>	the contract between Trolex and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
<b>Customer</b>	the person or firm who purchases the Goods and/or Services from Trolex.
<b>Deliverables</b>	the deliverables set out in the Order.
<b>Delivery Location</b>	has the meaning set out in <b>Clause 4.2</b> of these Conditions.
<b>Force Majeure Event</b>	has the meaning given to it in <b>Clause 15.1.1</b> of these Conditions.
<b>Goods</b>	the goods (or any part of them) set out in the Order.
<b>Intellectual Property Rights</b>	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
<b>Option</b>	the Customer's order for the supply of Goods and/or Services, as set out the Customer's purchase order form, or

in the alternative, the Customer's written acceptance of the Quotation or Service Quotation as the case may be.

**Quotation**

any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and Trolex.

**Services**

the services, including the Deliverables, supplied by Trolex to the Customer as set out in the Service Quotation.

**Service Quotation**

the description or specification for the Services provided in writing by Trolex to the Customer.

**Trolex**

Trolex Limited registered in England and Wales with company number 00644260 whose registered office is at 10A Newby Road, Hazel Grove, Stockport, Cheshire, England SK7 5DY.

**Trolex Materials**

has the meaning set out in **Clause 8.1.8**.

**1.2 Construction.** In these Conditions, the following rules apply:

- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its personal representatives, successors or permitted as signs;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 a reference to writing or written includes faxes and e-mails.

**2. Basis of contract**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 A Quotation or Service Quotation is an invitation to treat and no more. Furthermore the Order shall only be deemed to be accepted when Trolex accepts the Order by issuing an order acknowledgment at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or

given of whatever nature by or on behalf of Trolex which is not set out in the Contract.

- 2.4 Any samples, drawings, descriptive matter or advertising material in whatever form or medium issued by Trolex and any descriptions of the Goods or illustrations or descriptions of the Services contained in Trolex's catalogues, brochures, price lists or advertising material in whatever form or medium are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any Quotation and Service Quotation given by Trolex shall not constitute an offer, and are only valid for a period of 30 and 90 Business Days respectively from their respective dates of issue.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.8 The Customer shall at all times be responsible to Trolex for ensuring the accuracy all Orders including but not limited to any applicable specification submitted by the Customer, and for giving Trolex any necessary information specific to the Order.

### **3. Goods**

- 3.1 The Goods are described in the Quotation.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Quotation which contains or refers to particular information of whatever nature supplied by the Customer, the Customer shall indemnify Trolex against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Trolex in connection with any claim made against Trolex for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Trolex's use of the Quotation or any information contained therein. This Clause 3.2 shall survive termination of the Contract.
- 3.3 Trolex reserves the right to amend the specification of the Goods or the Quotation.

### **4. Delivery of Goods**

- 4.1 Trolex shall ensure that:
- 4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.1.2 if Trolex requires the Customer to return any packaging material to Trolex, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Trolex shall reasonably request.
- 4.2 Trolex shall either deliver the Goods to the location set out in the Order or such other

location as the parties may agree ('Delivery Location One') at any time after Trolex notifies the Customer that the Goods are ready or in the alternative the Customer shall collect the Goods from Trolex's premises at 10A Newby Road, Hazel Grove, Stockport, Cheshire, England SK7 5DY or such other location as may be advised by Trolex before delivery ('Delivery Location Two') within three Business Days of Trolex notifying the Customer that the Goods are ready for collection at Delivery Location Two.

- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at Delivery Location One or the completion of loading of the Goods at the Delivery Location Two, as the case may be.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Trolex shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Trolex with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If Trolex fails to deliver the Goods, its liability in this regard shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Trolex shall have no liability whatsoever for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide Trolex with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to accept or take delivery of the Goods within 3 (three) Business Days of Trolex notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Trolex's failure to comply with its obligations under the Contract in respect of the Goods:
- 4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the 4th (fourth) Business Day following the day on which Trolex notified the Customer that the Goods were ready; and
- 4.6.2 Trolex shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance), which is currently £250 plus VAT per day.
- 4.7 If 20 (twenty) Business Days after Trolex notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, Trolex may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, (as more particularly referred to in clause 4.6.2 of these Conditions) account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Customer shall not be entitled to reject the Goods if Trolex delivers up to and including 10 (ten) per cent more or less than the quantity of Goods ordered, however, a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 Trolex may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

**5. Quality of Goods**

- 5.1 Trolex warrants that on delivery, and for a period of 24 months from the date of delivery (**Warranty Period**), the Goods shall:
- 5.1.1 conform in all material respects with their description in the Quotation;
  - 5.1.2 be free from material defects in design, material and workmanship;
- 5.2 Subject to **Clause 5.3**, if:
- 5.2.1 the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in **Clause 5.1** then in that event;
  - 5.2.2 Trolex is given a reasonable opportunity of examining such Goods; and
  - 5.2.3 the Customer (if asked to do so by Trolex) returns such Goods to Trolex's place of business at the Customer's cost, Trolex shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 Trolex shall not be liable for the Goods' failure to comply with the warranty in **Clause 5.1** if:
- 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with **Clause 5.2**;
  - 5.3.2 the defect arises because the Customer failed to follow Trolex's oral or written instructions as to the storage, installation, calibration, integration into a system, commissioning, use or maintenance of the Goods or (if there are no such instructions) good trade practice;
  - 5.3.3 the defect arises as a result of Trolex following any instruction, specification, drawing, design, document or quotation including Quotation supplied or approved by the Customer;
  - 5.3.4 the Customer integrates into any system, alters, modifies or repairs such Goods without the prior written consent of Trolex;
  - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
  - 5.3.6 the Goods differ from the Quotation as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
  - 5.3.7 the defect is on any consumable part of the Trolex goods which have a life expectancy below the warranty time period.
- 5.4 Except as provided in this clause 5, Trolex shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in **Clause 5.1**.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Trolex under **Clause 5.2**.

**6. Title and risk**

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until Trolex has received payment in full (in cash or cleared funds) for:
- 6.2.1 the Goods; and
  - 6.2.2 any other goods that Trolex has supplied to the Customer in respect of which payment has become due.

- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 hold the Goods on a fiduciary basis as Trolex's bailee;
  - 6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Trolex's property;
  - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.4 maintain the Goods in a satisfactory condition and keep them insured against all risks for their full price on Trolex's behalf from the date of delivery;
  - 6.3.5 notify Trolex immediately if it becomes subject to any of the events listed in **Clause 13.1.2 to Clause 13.1.12**; and
  - 6.3.6 give Trolex such information relating to the Goods as Trolex may require from time to time,
- but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in **Clause 13.1.2 to Clause 13.1.12**, or Trolex reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Trolex may have, Trolex may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or those of any third party where the Goods are stored in order to recover them.

## **7. Supply of Services**

- 7.1 Trolex shall provide the Services to the Customer in accordance with the Service Quotation in all material respects.
- 7.2 Trolex shall use all reasonable endeavours to meet any performance dates for the Services specified in the Service Quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 Trolex shall have the right to make any changes to the Services which are necessary to comply with its own internal procedures, any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Trolex shall notify the Customer in any such event.
- 7.4 Trolex warrants to the Customer that the Services will be provided using reasonable care and skill.

## **8. Customer's obligations**

- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Order and the Service Quotation are complete and accurate (including any particular specification provided by the customer or Trolex) and notify Trolex of any inaccuracies contained therein immediately;
  - 8.1.2 co-operate with Trolex in all matters relating to the Services;
  - 8.1.3 provide Trolex, its employees, agents, consultants and subcontractors, with access to the Customer's premises, systems office and other accommodation and other facilities

- as reasonably required by Trolex to provide the Services;
- 8.1.4 provide Trolex, its employees, agents, consultants and subcontractors, with access to the Customer's customers or other third party's premises, systems office and other accommodation and other facilities as the case may be, as reasonably required by Trolex to provide the Services;
- 8.1.5 provide Trolex with such oral and written information and materials as Trolex may reasonably require to supply the Services, and ensure that such information is accurate in all respects;
- 8.1.6 prepare the Customer's and any other relevant third party premises and systems for the supply of the Services;
- 8.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 8.1.8 keep and maintain all materials, equipment, documents and other property of Trolex (**Trolex Materials**) at the Customer's premises in safe custody at its own risk, maintain Trolex Materials in good condition until returned to Trolex, and not dispose of or use Trolex Materials other than in accordance with Trolex's written instructions or authorisation; and
- 8.1.9 In the event of either Trolex or the Customer requiring that specific tests be carried out at either Trolex's premises or at any other location which may be necessary or required by either the Customer or Trolex (**'Tests'**) then in that event either Trolex or the Customer shall give to the other 5 (five) Business Days notice in writing of the date and the location of the Tests. In the event of any failure or delay on the part of the Customer to attend and be present at the Tests then in that event the Tests will proceed in the Customer's absence. For the purposes of the Contract the Tests shall be deemed to have been carried out in the Customer's presence and the Goods and/or any Services shall accordingly be deemed to have been accepted by the Customer if the person carrying out the Tests has certified in writing that the Goods and/or Services have passed the Tests.
- 8.1.10 For the avoidance of doubt the Tests requested or required by either Trolex or the Customer may be charged for in addition to the Goods and/or Services.
- 8.1.11 The Customer warrants to Trolex that:
- 8.1.11.1 the Goods and/or Services shall not be used or relied upon if a suspected fault develops or is suspected (**'Fault'**). Furthermore the Customer will immediately notify Trolex in writing of the Fault or the suspected Fault;
- 8.1.11.2 the Goods and/or Services shall not be tampered with and will only be used, installed and operated strictly in accordance with Trolex's specific written and/or oral instructions;
- 8.1.11.3 the Goods will be serviced by Trolex or any other third party approved by Trolex;
- 8.1.11.4 the Goods shall not be re-calibrated without the prior written approval of Trolex;
- 8.1.11.5 all external and internal power sources to the Goods and/or Services will be suitable, free from any interruption and defect and will be connected
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- precisely in accordance with Trolex's prior written instructions;
  - 8.1.11.6 the Goods and/or Services shall not be used for any other purpose other than the purpose specified by Trolex;
  - 8.1.11.7 the Goods and/or Services will not be used beyond the life span particularly specified by Trolex for such Goods and/or Services;
  - 8.1.11.8 the Goods and/or Services shall be installed and used strictly in accordance with all statutory requirements of the Health and Safety Executive and all applicable Laws and regulations (for the avoidance of doubt including all EEC Laws and Regulations.
  - 8.1.11.9 It is the end user's responsibility to ensure arrangements have been made to finance the costs of the collection, treatment, recovery, and the environmentally sound disposal of WEEE
- 8.2 If Trolex's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or any other third party or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.2.1 Trolex shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Trolex's performance of any of its obligations;
  - 8.2.2 Trolex shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Trolex's failure or delay to perform any of its obligations as set out in this **Clause 8.2**; and
  - 8.2.3 the Customer shall reimburse Trolex on written demand for any costs or losses sustained or incurred by Trolex arising directly or indirectly from the Customer Default.

## 9. Charges and payment

- 9.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in Trolex's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 9.2 The charges for Services shall be on a time and materials basis:
- 9.2.1 the charges shall be calculated in accordance with Trolex's standard daily fee rates, as set out in the Service Quotation;
  - 9.2.2 Trolex's standard daily fee rates for each individual person are calculated on the basis of an 8-hour (eight-hour) day from 8.00 am to 5.00 pm worked on Business Days;
  - 9.2.3 Trolex shall be entitled to charge an overtime rate of 150% of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in **Clause 9.2.2**; and
  - 9.2.4 Trolex shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Trolex engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Trolex

for the performance of the Services, and for the cost of any materials.

9.3 Trolex reserves the right to:

9.3.1 increase its standard daily fee rates for the charges for the Services, Trolex will give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Trolex in writing within 10 (ten) Business Days of the date of Trolex's notice and Trolex shall have the right without limiting its other rights or remedies to terminate the Contract by giving 5 (five) Business Days written notice to the Customer; and

9.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Trolex that is due to:

9.3.2.1 any factor beyond the control of Trolex (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

9.3.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Quotation; or

9.3.2.3 any delay caused by any instructions of the Customer or any relevant third party in respect of the Goods or failure of the Customer to give Trolex adequate or accurate information or instructions in respect of the Goods.

9.4 In respect of Goods, Trolex shall invoice the Customer on or at any time after completion of delivery. In respect of Services, Trolex shall invoice the Customer on in arrears.

9.5 Unless the relevant sale of Goods or Services is for cash or on shorter credit terms stipulated by Trolex then the Customer shall pay each invoice submitted by Trolex:

9.5.1 within 30 (thirty) days of the date of the invoice; and

9.5.2 in full and in cleared funds to a bank account nominated in writing by Trolex, and time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Trolex to the Customer, the Customer shall, on receipt of a valid VAT invoice from Trolex, pay to Trolex such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.7 Without limiting any other right or remedy of Trolex, if the Customer fails to make any payment due to Trolex under the Contract by the due date for payment (**Due Date**), Trolex shall have the right to charge interest on the overdue amount at the rate of 4 (four) per cent per annum above the then current Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

9.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Trolex in order to justify withholding payment of any such amount in whole or in part. Trolex may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Trolex to the Customer.

**10. Intellectual property rights**

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and Services shall be owned by Trolex.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods and/or Services, the Customer's use of any such Intellectual Property Rights is conditional on Trolex obtaining a written licence from the relevant licensor on such terms as will entitle Trolex to license such rights to the Customer.
- 10.3 All Trolex Materials are the exclusive property of Trolex.

**11. Confidentiality**

- 11.1 A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This **Clause 11** shall survive termination of the Contract.

**12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 12.1 Nothing in these Conditions shall limit or exclude Trolex's liability for:
  - 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 12.1.2 fraud or fraudulent misrepresentation;
  - 12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - 12.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
  - 12.1.5 defective products under the Consumer Protection Act 1987.
- 12.2 Subject to **Clause 12.1** and **Clause 8.1.11**:
  - 12.2.1 Trolex shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
  - 12.2.2 Trolex's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lower of the price for the Goods and Services and £1,000,000.
- 12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by

statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This **Clause 12** shall survive termination of the Contract.

### **13. Termination**

13.1 Without limiting its other rights or remedies, Trolex may terminate the Contract with immediate effect by giving written notice to the Customer if:

- 13.1.1 the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 7 (seven) Business Days after receipt of notice in writing of the breach;
- 13.1.2 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 13.1.3 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 13.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 13.1.5 the Customer (being an individual) is the subject of a bankruptcy petition or order;
- 13.1.6 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 (fourteen) days;
- 13.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer (being a company);
- 13.1.8 a floating charge holder over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 13.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the Customer;
- 13.1.10 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1.2 to clause 13.1.9 (inclusive);
- 13.1.11 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 13.1.12 the Customer (being an individual) dies or, by reason of illness or incapacity (whether

mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 13.2 Without limiting its other rights or remedies, Trolex may terminate the Contract:
- 13.2.1 by giving the Customer 7 (seven) Business Days' written notice;
  - 13.2.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 13.3 Without limiting its other rights or remedies, Trolex shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Trolex if:
- 13.3.1 the Customer fails to make pay any amount due under this Contract on the due date for payment; or
  - 13.3.2 the Customer becomes subject to any of the events listed in **Clause 13.1.2** to **Clause 13.1.12**, or Trolex reasonably believes that the Customer is about to become subject to any of them.

#### **14. Consequences of termination**

- 14.1 On termination of the Contract for any reason:
- 14.1.1 the Customer shall immediately pay to Trolex all of Trolex's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Trolex shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 14.1.2 the Customer shall return all of Trolex Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Trolex may enter the Customer's premises or if relevant the premises of any relevant third party and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - 14.1.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - 14.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### **15. General**

- 15.1 Force majeure:
- 15.1.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Trolex including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or any transport network or system for whatever reason, act of God, war, riot, civil commotion, malicious damage, compliance with any law or order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
  - 15.1.2 Trolex shall not be liable to the Customer as a result of any delay or failure to perform

its obligations under this Contract as a result of a Force Majeure Event.

15.1.3 If the Force Majeure Event prevents Trolex from providing any of the Services and/or Goods for more than 8 (eight) weeks, Trolex shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15.2 Assignment and subcontracting:

15.2.1 Trolex may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

15.2.2 The Customer shall not, without the prior written consent of Trolex, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.3 Notices:

15.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

15.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 10.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

15.3.3 This clause 15.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

15.4 Waiver and cumulative remedies:

15.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

15.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

15.5 Severance:

15.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, en

forceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

- 15.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 15.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Trolex.
- 15.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**At Trolex, we save lives.**

We believe that no person should risk their life to earn a living.

We aim to become the world's leading name in health and safety technology through pioneering products that provide real-world benefits to our customers whenever workers operate in hazardous environments.

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