

# CREDIT ACCOUNT APPLICATION

## COMPANY DETAILS

SECTION ONE

NAME OF COMPANY .....

REGISTERED OFFICE .....

..... POST CODE .....

TEL ..... MOBILE ..... FAX .....

EMAIL ..... SALES CONTACT .....

TRADING STYLE (tick one)      SOLE TRADER       PARTNERSHIP       LIMITED COMPANY

COMPANY REGISTRATION No (Limited Companies only) ..... ANNUAL TURNOVER £ .....

## TRADING ADDRESS

SECTION TWO

(If different from SECTION ONE) .....

..... POST CODE .....

Is this address to be used for invoicing. If not give details in SECTION SIX

## TRADE REFERENCES

SECTION THREE

(Companies you trade with / Bank or Building Society)

1. .... 2. ....

ADDRESS ..... ADDRESS .....

TEL ..... FAX ..... TEL ..... FAX .....

## CREDIT GUARANTEE

SECTION FOUR

IN CONSIDERATION OF M. P. MORAN & SONS LIMITED ("MORANS") GRANTING CREDIT FACILITIES TO THE ABOVE NAMED COMPANY OR PARTNERSHIP (OF WHICH I/WE ARE DIRECTOR/DIRECTORS OR PARTNER/PARTNERS) I/WE THE UNDERSIGNED AGREE THAT THE ACCOUNT SHALL BE OPERATED ON MORAN'S TERMS & CONDITIONS. I/WE HEREBY UNDERTAKE AND PERSONALLY GUARANTEE (JOINTLY AND SEVERALLY) ALL SUMS AS MIGHT FROM TIME TO TIME BE DUE AND PAYABLE BY THE COMPANY OR PARTNERSHIP TO MORAN'S INCLUDING ANY FINANCIAL OBLIGATION ARISING FROM ANY INCREASE IN THE CREDIT LIMIT GRANTED OR THE AUTHORISED CREDIT LIMIT HAVING BEEN EXCEEDED BY THE COMPANY OR PARTNERSHIP. I/WE SHALL BE LIABLE AS PRINCIPAL DEBTOR AND WITHOUT AND BEFORE ANY FORMAL DEMAND FOR PAYMENT/OR PROCEEDINGS BEING ISSUED AGAINST THE COMPANY

NAME (Block Capitals) ..... NAME (Block Capitals) .....

SIGNATURE/DIRECTOR ..... SIGNATURE/DIRECTOR .....

/PARTNER (1) ..... /PARTNER (2) .....

DATE OF BIRTH ..... DATE OF BIRTH .....

## PERSONAL DETAILS OF DIRECTOR(S) OR PARTNER(S)

SECTION FIVE

(If there are less than 3 years please give previous address also in additional information section):-

(1) NAME ..... (2) NAME .....

ADDRESS ..... ADDRESS .....

..... TEL ..... TEL .....

## ADDITIONAL INFORMATION

SECTION SIX

(Use this section to provide us with any other information or if you run out of space in any other section)

## CREDIT REQUEST

SECTION SEVEN

PLEASE COMPLETE ALL 7 SECTIONS OF THIS APPLICATION AND ENSURE YOU HAVE READ AND UNDERSTOOD OUR TERMS AND CONDITIONS OF OPERATION OF CREDIT ACCOUNT BEFORE SIGNING THE SECTION BELOW.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THE M. P. MORAN & SONS LIMITED TERMS & CONDITIONS. I/WE MAKE THIS APPLICATION TO OPEN A CREDIT ACCOUNT WITH M P MORAN & SONS LIMITED. I/WE UNDERSTAND THAT CREDIT TERMS ARE THAT PAYMENT IS DUE PROMPTLY AT THE END OF THE MONTH FOLLOWING THE DATE OF INVOICE, AND THAT IF GRANTED CREDIT I/WE AGREE TO PAY IN ACCORDANCE WITH THESE TERMS. I/WE ACKNOWLEDGE AND ACCEPT M. P. MORAN & SONS LIMITED TERMS OF TRADING.

REQUESTED CREDIT LIMIT £ ..... DATE .....

SIGNATURE OF APPLICANT 1 ..... NAME (Block Capitals) .....

SIGNATURE OF APPLICANT 2 ..... NAME (Block Capitals) .....

M.P. MORAN & SONS LTD  
REGISTRATION NO: 1218121

REGISTERED OFFICE: 293/301 KILBURN HIGH ROAD, LONDON NW6 7JR



BUILDERS & PLUMBERS MERCHANTS

# M. P. Moran & Sons Ltd. Terms and Conditions of Sale

## 1. GENERAL

- In these conditions "we" means the company M. P. Moran & Sons Limited and "you" means any person who agrees to buy or does buy goods from us; "us", "our", "your" and "yours" shall be construed accordingly.
- The terms and conditions of any sale of goods from us to you will be the terms and conditions printed here together with, or as varied by, any special written terms signed by one of our directors.
- Our terms and conditions of sale shall apply to all contracts with us to the exclusion of all other terms and conditions (including any terms or conditions which you may purport to apply under any purchase order, confirmation of order or any other document) without the prior written consent (signed by one of our directors) that any other term is to take precedence over these terms and conditions.
- Any variation to or exclusion of these terms and conditions shall be inapplicable without our prior written consent signed by one of our directors.
- Nothing in any contract with us should be taken as providing that a third party may in his own right enforce any term of such a contract. Nor shall any terms of any contract with us purport to confer any benefit upon any third party unless the contrary is clearly and expressly agreed in writing signed by one of our directors.
- You may not assign or novate any contract with us or any part of it without our prior written consent signed by one of our directors. Neither you nor any other party may infer our consent to a novation of any contract merely from our conduct or silence or oral representations.
- No terms or conditions of any main building contract or sub-contract or other contract of any kind shall be implied into any contract with us whether or not we have notice of them, without our prior written consent signed by one of our directors.
- If any provision or part of a provision of the contract is found by any court, or other body of competent jurisdiction, to be wholly or partly illegal, invalid, void, voidable or unenforceable then to the extent of it being illegal, invalid, void, voidable or unenforceable, it shall be severable and the remaining provisions of the contract (and the remainder of such provision if appropriate) shall continue in full force and effect.
- The headings in these terms and conditions are included for reference only and are not intended to affect or limit the interpretation and effect of these terms and conditions.

## 2. QUOTATIONS, OFFERS, ORDERS AND ACCEPTANCE

- Our quotations shall be read by you as invitations to treat and not offers.
- Any obvious typographical mistake or omission in any of our sales literature, quotations, price lists, acceptances of offer, invoices or any other document or any other information given by us shall be subject (at any time, whether you first notice the mistake or omission or we do) to correction and no liability shall arise from such a mistake or omission.
- We may withdraw or amend any quotation or change the price of any goods for any reason and at any time prior to our acceptance of any order or offer which you might make.
- All orders by you for goods shall be deemed to be an offer by you to purchase such goods pursuant to these terms and conditions. We may then accept or decline your offer.
- Acceptance of your order will take place when we issue a written acknowledgement to you or otherwise communicate our acceptance to you, in writing, by telephone or e-mail.

## 3. DESCRIPTION, QUANTITIES AND FITNESS FOR PURPOSE

- The quantity and description of the goods which you agree to buy from us shall be as set out in our written acknowledgement of your order, and if indicated in the acknowledgement, in your order as accepted.
- We warrant that the goods will at the time of delivery to you correspond to the description given by us.
- Except where you are dealing as a consumer (as defined in the Unfair Contracts Terms Act 1977, Section 12) all other warranties, terms and conditions relating to fitness for purpose, merchantability or condition of the goods and whether implied by statute or common law or otherwise are excluded. The rest of this clause is without prejudice to the generality of this exclusion.
- Any estimate given to you by us of quantities of any goods needed is given without any intention to make such an estimate a term or condition of any contract with us, or to enter into a collateral contract in relation to that estimate. You agree that we may give you such estimates without liability for errors in such estimates.
- Any advice or recommendation as to the suitability or fitness of any goods for any purpose given by us, is given without liability for errors on our part. If you are a consumer, and you require advice as to suitability or fitness of any goods, then you should seek advice from an appropriate builder, surveyor, architect or other third party before ordering goods from us.

## 4. PRICE

- The price payable for the goods sold to you shall be the price in our written acknowledgement of your order, or (if and to the extent indicated and thereby incorporated in the acknowledgement) in our quotation to you or your order.
- If there is no price indicated in any of the above documents, then the price shall be the price for the goods set out in any of our current published sales literature (including any flyers) as most recently published (whether generally or to you) before you made your order.
- Unless we otherwise agree in writing all prices shall be deemed to be exclusive of Value Added Tax which shall be payable in addition by you at the applicable rate at the date of the invoice.
- Unless otherwise agreed in writing with one of our directors, we reserve the right to charge you the reasonable cost of transportation (usually, but not exclusively, by road) of the goods to the destination requested by you.

## 5. TERMS OF PAYMENT AND CREDIT TERMS

- We may offer you a credit account in our absolute discretion. Please ask us if you wish to apply for one.
- For all other sales (or when your credit account has been suspended or closed, or its limit reached or exceeded) payment shall be made with the order, in cash, by cheque or by credit card. If payment is not made with any order, we have the right to require cash or cheque on delivery and/or to refuse to deliver those or any other goods (whether actually paid for or not) until payment is received. If we have a reason to suspect that a cheque or credit card offered for payment is unlikely to be honoured or good for payment or otherwise unauthorised by the apparent payer or card holder, we may require payment in cash.
- Whether or not you have a credit account, you may not withhold or set off (against any amount you owe us) any sums, whether in respect of a claim by you relating to goods supplied by us or on any other contract between you and us or howsoever allegedly arising for any reason, whether in debt, damages or otherwise, unless such sum is not contested by us and we have agreed in writing that you may so withhold or set off such sums.
- If you fail to make any payment on the due date (whether or not you have a credit account) then, without prejudice to any other right or remedy available to us, we shall be entitled to:
  - Terminate any contract between you and us by written or oral notice and/or suspend further deliveries of goods to you;
  - Appropriate any payment made by you to us (or any goods supplied to us) under any other contract between you and us, as we might choose (and notwithstanding any purported appropriation by you);
  - Charge interest at the rate of 2% per month on the unpaid balance; this interest accruing on a day to day basis from the due date for payment until receipt by us of the full amount whether before or after judgment; and
  - Be indemnified by you against all costs and expenses (including legal costs and expenses on a full indemnity basis) incurred by us in recovering sums due or in exercising our rights pursuant to this clause 5.

## 6. COLLECTION AND DELIVERY

- Unless otherwise agreed, you will collect the goods from us within 7 days of our acknowledgement of your order.
- If we have agreed to deliver goods to you, then delivery shall be made to the address which you shall give us (whether yours or that of a third party).
- We shall not be liable to you for any loss you may suffer as a result of a failure to deliver on any particular date, or at any particular time, nor shall time be of the essence in relation to the delivery of any goods sold under any contract with us.
- If agreed, the goods will be tendered to you for delivery at the specified address.
- Where we agree to deliver your goods, you warrant that there will be a suitable road for the delivery vehicle to the place where you have requested delivery. If you are in any doubt as to access, you must tell us in good time before the time arranged for delivery. If no suitable road exists, the goods will be tendered for delivery at the nearest place to which, in the opinion of the driver, his vehicle can safely proceed and stop for unloading or (at his or our choice) the goods will be returned to us for you to collect.
- Unless we agree with you in advance of delivery, our vehicle will not be equipped with a crane or machinery for unloading and you will make all arrangements for suitable labour and equipment to unload the goods promptly. Under no circumstances will our driver or employees or agents be responsible for unloading your goods after they are tendered for delivery.
- If you refuse or fail to take delivery of goods tendered in accordance with the contract we shall nevertheless be entitled to full payment for the goods so tendered. We shall also be entitled to store at your risk and cost any goods of which you refuse or fail to take delivery and in that case you will also be liable for any additional costs of carriage incurred as a result of your refusal or failure to accept goods tendered for delivery.
- Whether we store your goods or not, we will be entitled to terminate the contract for sale of the goods to you and then be free to sell the goods to any other party if you show no serious intention to collect them or accept delivery of them within a reasonable time. In those circumstances, you will not be entitled to repayment of the price you paid for the goods and agree that you will have no claim for damages or breach of contract against us.
- On your request, we will within 3 months of delivery, provide evidence of delivery of goods ordered, in the form of a copy of a delivery note or other suitable document. If you do not raise any query about delivery within such period, the goods shall be deemed to have been delivered in accordance with your order.

## 7. ACCEPTANCE OF THE GOODS

- You shall be deemed to have accepted the goods 2 working days after delivery to you.
- You shall make a suitable inspection of the goods on delivery.
- After acceptance you shall not be entitled to reject the goods which are not in accordance with the contract with us.

## 8. RISK

The risk in the goods shall pass to you upon delivery, that is when you take possession of them at our premises, or when they are tendered to you for delivery elsewhere. For the avoidance of doubt, the risk in the goods is yours while you unload them from our vehicle.

## 9. TITLE TO GOODS

- In spite of delivery having been made property in the goods shall not pass from us to you until:
  - we have received payment of all sums due to us in respect of goods sold to you together (where applicable) with VAT and the cost of packaging and delivery plus any interest and charges due thereon;
  - no other sums whatever are due from you to us.
- Until property in the goods passes to you in accordance with the last sub-clause, you shall hold the goods on a fiduciary basis as bailee for us. You will store the goods (at no cost to us) separately from all other goods in your possession and marked in such a way that they are clearly identified as our property.
- Notwithstanding that the goods or any of them remain our property, you may sell or use the goods in the ordinary course of your business at full market value for our account. Any such sale or dealing shall be a sale or use of our property by you on your own behalf and you shall deal as principal when making such sales or dealings. Until property in the goods passes from us the entire proceeds of sale or otherwise of the goods shall be held in trust for us and shall not be mixed with other moneys or paid into any overdrawn bank account and shall be at all material times identified as our money.
- We will be entitled to recover the price (plus VAT and any other associated charges and interest) notwithstanding that property in any of the goods has not passed from us.
- Until such time as property in the goods passes from us, you shall upon request deliver up such goods as have not ceased to be in existence or resold, to us. If you fail to do so, we may enter upon any premises owned, occupied or controlled by you where the goods are situated and repossess the goods. On the making of such request your rights under sub-clause 9(c) shall cease.
- You shall not pledge or in any way charge by way of security for any indebtedness any of the goods which are our property. Without prejudice to our other rights, if you do so, all sums whatever owing by you to us shall forthwith become due and payable.
- You shall insure and keep insured the goods to the full price (as agreed with us by this contract) against all risks to our reasonable satisfaction until the property in the goods passes to you and shall whenever requested by us, produce a copy of the policy of insurance. Without prejudice to our other rights, if you fail to do so all sums whatever owing by you to us shall forthwith become due and payable.
- You shall promptly deliver such prescribed particulars of this contract to the Registrar as required by and in accordance with Part XII of the Companies Act 1985 as amended or in accordance with any substantial re-enactment thereof. Without prejudice to our other rights, if you fail to do so all sums whatever owing by you to us shall forthwith become due and payable.
- The authority given to you pursuant to sub-clause 9(c) will continue until otherwise notified to you by us and until the happening of any of the following events (whichever is earlier):
  - any notice to you that an administrative receiver or receiver or manager is about to be or has been appointed over your undertaking or a material part thereof;
  - any petition to wind up you has been presented against you or you have proposed or know of any proposal to pass a resolution to wind you up;
  - a decision by you to make a voluntary arrangement or composition with your creditors or any notice has been given to you that any of your creditors is about to make a proposal for the same;
  - you becoming unable to pay your debts as defined by the Insolvency Act 1986; or
  - any notice to you that a petition for an administration order has been presented against you or is about to be presented or an administration order has been ordered against you; and further you shall immediately notify us in writing upon the happening of any such event.
- On receipt of written notice from us or on the happening of any of the events set out in last sub-clause, your authority to sell our goods shall immediately be withdrawn and all such goods and products which you have not paid for in full shall be delivered back to us forthwith on your cost and risk together with all things made entirely therefrom.

## 10. LIABILITY

- You acknowledge that you do not rely on, and waive any claim for breach of, any representations made by our directors, employees or agents.
- In the case of any defect:
  - discoverable upon reasonable examination, we will make good by repair or replacement (at our option) any defects in the goods due solely to defective workmanship or materials as are notified in writing to us before deemed acceptance of the goods;
  - not discoverable upon reasonable examination, provided that you notify us within 2 working days of the date that you discover such defect, we will make good by repair or replacement (at our option) any defects in the goods due solely to defective workmanship or materials.
- In the case of any mis-description on the container or packaging of any goods purchased, provided that you notify us of the mis-description within 2 working days of the date when you discover the mis-description and provided also that you return the mis-described goods to us in the same condition as sold to you, we will replace them with goods corresponding to the description on the container and/or package or (in our sole discretion) offer you a refund.
- provided always (in the case of each of 10(b)(i) and (ii) and 10(c) above) that:
  - our above obligations shall not extend to defects caused by willful damage, negligence (other than by us or our employees or agents), fair wear and tear, alteration or repair of the goods without our prior written approval, or incorrect storage, application, movement or installation or the continued use thereof after they have been found to be defective or mis-described or (if earlier) could reasonably have been so found;
  - we shall not be responsible either for the cost of removing any defective (or the wrong) goods from any place where they are installed or affixed (or making good the place after removal) or for the cost of installing or affixing in such place any repaired or replacement goods unless the same has been previously agreed in writing by one of our directors; and
  - our above obligations shall in any event only apply for a period of 12 months from the date of delivery.
- We do not accept liability for shortages in quantities delivered unless you notify us of any claim for short delivery of the goods within 2 working days of delivery. In those circumstances our liability shall be limited to making good the shortage to you within a reasonable time.
- Save as set out in these conditions and save for liability for death or personal injury resulting from our negligence and save for breach of our undertakings as to title implied by statute, all express or implied conditions, representations or warranties as to description, quality or fitness of the goods or otherwise are expressly excluded. We shall not be liable for any consequential, indirect or economic loss or for any loss or depletion of profits, business, revenue, goodwill or anticipated savings, (whether arising from breach of contract, tort including breach of statutory duty and negligence, misrepresentation or otherwise).
- Where fine or special tolerances or particular specifications are required in the goods supplied beyond those generally accepted in the building trade, we shall not be liable if such goods do not fit your particular requirements unless such tolerances or specifications have been clearly and expressly notified to us in writing at the time of your order and we have acknowledged in writing that we are prepared to accept such order and supply goods with such tolerances and specifications.
- Where the goods are sold under a consumer sale your statutory rights are not affected by these conditions.
- On request, we will provide information about any guarantee offered by a manufacturer and available to you in respect of the goods.

## 11. MEASURES

We may supply all or any of the goods in either metric or imperial sizes in the nearest equivalent measure and goods may be charged in metric measure allowing for conversion.

## 12. PACKAGING AND WASTE

- A charge may be made by us for any special packaging to cover the cost of packaging labour and materials.
- Pallets will be charged for but charges will be credited in full if such items are returned to us, carriage paid and in good condition, within 7 working days of delivery.
- You will be responsible for the disposal of any waste or waste packaging produced by the delivery or sale or transport of goods bought from us and will comply with all applicable laws, regulations and waste management licences relating to such waste. You will indemnify us against all costs, claims, liabilities and expenses incurred by us arising from or in connection with any breach by you of this sub-clause.

## 13. CANCELLATIONS OF ORDERS

- If you wish to cancel your order after we have accepted it, we may (but are not obliged to) agree to cancel the contract. We will not cancel any contract for goods which are to be specially made by us or specially ordered by us or which are liable to deteriorate or expire rapidly after we have accepted an order of you nor will any refund be offered to you in respect of such goods where they are subsequently returned.
- Notwithstanding the last sub-clause, if you are a "consumer" under a "distance contract" (as defined in the Consumer Protection (Distance Selling) Regulations 2000) you have the right to cancel your contract with us within 7 working days after the day after the goods are delivered. You must then either return the goods to the branch from which they were delivered or request us to collect the goods; in the latter case you will be liable to pay our costs of collection.
- Even as a consumer, you will not have a right of cancellation under the last sub-clause where the goods are made to your specification or are personalised or are liable to deteriorate or expire rapidly.

#### 14. RETURN OF GOODS AND BOILERS, SHOWERS AND SHOWER BOOSTER PUMPS

- (a) If you want to return goods bought from us and delivered to you because you made a mistake in ordering them from us (or have changed your mind), we may in our absolute discretion accept the return of such goods. If we decide to accept the return of such goods, such acceptance shall be upon such terms as we may determine and in particular we reserve the right to charge for the carriage and handling of such goods before refunding you the contract price you paid. We will not accept the return of goods which are liable to deteriorate or expire rapidly. If we do agree to accept the goods, they must be returned within 14 days of delivery date stated on invoice or the date when we agree to accept them, whichever is later or as otherwise specifically agreed with you in writing.
- (b) In relation to boilers, showers and shower booster pumps, you understand that we are not responsible for the manufacture of any such items which are faulty. Without prejudice to our statutory obligations, we will endeavour to help any consumers who or purchasers who buy boilers, showers and shower booster pumps from us which are faulty, but it is likely to be in your best interests to contact the manufacturer directly for technical assistance and expert engineering or other specific advice. We will do our best to help you contact the manufacturer and otherwise assist you if practicable.
- (c) If we incur any costs as a result of the negligent or incorrect installation, fitting or removal by you or your agents of any boiler, shower or shower pump (whether faulty or not), then you agree to reimburse us for those costs in full.

#### 15. SKIP HIRE

- (a) All the terms and conditions printed here apply to any contract with us for the temporary supply and removal of skips ("skip hire") as they apply to the purchase of goods mutatis mutandi, with the exception of sub-clauses 6(a),(f) and (i) and clauses 7, 8, 9, 12 and 14, in addition to and save as varied by the terms and conditions set in this clause 15 which apply only to such skip hire.
- (b) You understand and agree that we may sub-contract with other persons for the skip hire. We recommend that you ensure you are insured in respect of your liability when hiring a Container under this contract
- (c) Definitions relating to skip hire (applicable to this clause 15 only)
- (i) 'Site' and 'Delivery Address' mean your address or such other place you specify and agreed by us in advance.
- (ii) 'Skip' and 'Container' mean a skip or any other container hired from us, whether or not we sub-contract with another party for its supply. If we subcontract its hire from a third party, that third party shall be the subcontractor referred to herein.
- (iii) The 'Hire Period' means the period from when the Container is delivered to the Site until it is collected therefrom.
- (d) Maximum period of hire
- If you are an individual, a partnership or any other unincorporated body and notwithstanding any other term, the Hire Period shall be no more than 3 months and you must restore the Container to us or our subcontractor before the last day of the Hire Period and in accordance with clause 15(a).
- (e) Type and condition of Container
- (i) We cannot and do not warrant that the Container supplied shall be fit for any purpose.
- (ii) You must satisfy yourself as to the type capacity size at the time of ordering the Container.
- (iii) Unless notice to the contrary is received by us or our subcontractor within 24 hours of supply, the Container shall be deemed to be in good order and condition.
- (f) Delivery Loading Unloading And Collection
- (i) We shall be responsible for delivering the Container to the Site and for its collection from the Site at the end of the Hire Period.
- (ii) Any employee servant officer or agent of yours who you direct authorize or allow to supervise the delivery loading unloading and/or collection of the Container shall be deemed to be under your control and you will be responsible to us for any damage caused to the Container under such supervision. If you direct that the delivery loading unloading and/or collection of the Container is to be off the public highway, you will be responsible for any and all damage to the Container or any person's property caused by or during such delivery loading unloading and collection.
- (g) The Container must not be moved from the Site without our written authority or that of our subcontractor.
- (h) The Container must not be re-hired, sublet, or lent to any third party without our written authority or that of our subcontractor.
- (i) Maintenance, operation and use of Container
- (i) You shall at all times keep yourself acquainted with the state and condition of the Container and ensure that it remains in good condition safe and serviceable.
- (ii) You shall not use or permit the use of the Container for any purpose other than as a waste container.
- (iii) You undertake to use and permit the use of the Container only in accordance with any relevant operating and safety instructions that that may be supplied with it.
- (iv) You must not make or permit any person to make any alterations or modifications to the Container.
- (v) You warrant that all officers employees servants and agents of yours will have been instructed in the safe use and operation of the Container and you undertake to ensure that any other user of the Container will also be accordingly instructed before using it.
- (vi) You warrant that (unless we or our subcontractor have agreed otherwise) you have obtained all consents licenses permissions authorisations and the like which are or may be required for the use and siting of the Container. In particular, where the Container is to be sited on a public highway or path, you warrant that the relevant highway authorities have given you permission to site it there. You warrant and undertake to comply with all conditions made and instructions provided or directed by the such authorities.
- (vii) You shall provide and maintain adequate warning lights signs and/or cones as may be necessary or desirable on each Container left on or near a public highway or any other place where damage or injury to third parties could be caused whilst it is in your possession custody or control and at any other time when it is on Site during the Hire Period.
- (viii) You will ensure that the Container is not left in a dangerous condition whilst in your possession custody or control or on Site or during the Hire Period, by reason of the nature state or condition of loading of materials or otherwise and you will ensure that the Container is not overloaded or unevenly dangerously or improperly loaded, for example with heavy dangerous or bulky material on the top.
- (ix) You will not permit dangerous corrosive harmful poisonous or toxic substances or any other contaminated material, gas cylinders or tyres to be put into the Container.
- (x) Our subcontractors and we may refuse to collect the Container if we have any reason to believe that you have acted or permitted any person to act in breach of paragraphs (ii), (iv), (viii) or (ix) above the Hire Period shall then continue at your risk and expense until any such breaches have been remedied to our reasonable satisfaction.
- (xi) If we do collect the Container, you will indemnify us and our subcontractor against all costs resulting from or incurred in remedying any breach of paragraphs (ii), (iv), (viii) or (ix) above.
- (j) You shall at all reasonable times allow us or our subcontractor or our insurers to have access to the Container to inspect and collect it.
- (k) If the Container is involved in any accident resulting in damage to it or to any other property or injury to any person, you must notify us and/or our subcontractor immediately. You warrant that you will always act in full compliance with the law and all lawful directions of the police or other public authority in event of any such accident.
- (l) Responsibility for loss or damage
- (i) During the Hire Period you shall be liable to us and our subcontractor for the loss of and/or any damage to the Container from any cause whatsoever except fair wear and tear.
- (ii) In the event of loss of or damage to the Container, the agreed periodic charges shall continue as if the hire of the Container continued, until such time as you pay us for the costs under paragraph (i) above.
- (m) Indemnity against claims
- (i) You will indemnify us in respect of all claims by any person whatsoever for injury to persons or property caused by or in connection with or arising out of the use possession delivery loading unloading or collection of the Container and in respect of all costs and charges resulting therefrom or in connection therewith.
- (ii) In particular you shall at all times indemnify us and our sub-contractor for any cost claim damage expense or loss incurred by us or our subcontractor where the delivery or collection of the Container involves the delivery vehicle (or any part of it) leaving the public highway.
- (n) Consequential loss etc.
- (i) We shall not be liable for any consequential loss or damage arising from the alleged breach of any term of this contract of hire of a Container.
- (ii) We shall use our best endeavours to ensure that the Container is delivered at the agreed time, but you agree that time is not of the essence and we shall not be liable for the consequences of late delivery or late collection of a Container.
- (iii) In particular we shall not be liable for any delay or default in performance arising out of force majeure or any reason outside our reasonable control.
- (iv) Save for liability for death or personal injury caused by our negligence our liability to you shall not exceed the charges for the Hire Period.
- (o) When the hire is for a fixed period, it shall terminate on the date that period expires. When the hire is not for a fixed period or when it is continued after the expiry of a fixed period, without any new fixed termination date being agreed, either party may terminate the hire by giving to the other one working day's notice in writing.
- (p) Availability of Container on completion of hire
- (i) You will be responsible for making the Container available in a good condition for collection by vehicle to our reasonable requirements on termination of the hire.
- (ii) If the Container cannot be returned to us or our subcontractor at the end of the Hire Period because of its loss destruction or theft, whether or not your fault, you will pay us the manufacturer's recommended selling price for a new container of the same type size and capacity.
- (q) Hire charges
- (i) Containers shall be hired and charged to you by the week or for such alternative period as we may in writing agree.
- (ii) All times, including Saturdays, Sundays and Public Holidays, in the Hire Period are chargeable.
- (iii) All charges are payable on demand and unless you have a credit account with us all charges must be paid in advance of or on delivery of the Container. If you have a credit account, invoices must be paid in accordance with the terms of your account.
- (iv) If the Container is not ready to or cannot be collected on the agreed date for collection or at the end of the Hire Period (other than by reason of our default or our request or direction), the agreed periodic hire charges shall continue until such time as we do collect the Container or until you have paid the price set out in clause 15(p)(ii).
- (v) If payment of a hire charge or any other sum due under the contract is not made on its due date for payment we may charge interest at the rate of 2% per month.
- (r) You will not remove deface or cover up any name-plate or identification mark or number on the Container, nor put any mark on it which might indicate a new or different owner.
- (s) Disposal of Container
- (i) You will not sell mortgage charge pledge part with possession of or otherwise deal with the Container except as expressly permitted under this Contract or with our written consent or that of our subcontractor.
- (ii) You will protect the Container against distress execution or seizure by, inter alia, keeping all interested parties informed as to the limited nature of your interest therein under this contract.
- (iii) You will indemnify us against all loss damage costs charges and expenses arising as a result of any failure to observe and perform the terms and conditions of this sub-clause (s).
- (t) Termination for breach of contract
- (i) The hire of a Container shall immediately terminate without any notice from or any act by us if you –
- fail to pay when due any sums due for the hire of the Container or any debt or charges arising therefrom; or
  - act in breach or fail to observe and perform the terms and conditions relating to the hire of the Container; or
  - suffer any distress or execution to be levied against you or make or propose to make any arrangement with your creditors or are declared bankrupt or, being a company, go into liquidation, administration or administrative receivership or have a petition presented against you for any of those things, or have a receiver appointed over all or any of your property; or
  - do or cause to be done or permit or suffer any act or thing whereby our rights in the Container (or those of our subcontractor) may be prejudiced.
- (ii) If the hire of the Container is terminated under this sub-clause (t), it shall be lawful for us or our subcontractor to retake possession and, for that purpose, to enter into or upon any premises where the Container may be.
- (iii) The termination of the Contract under this sub-clause (t) shall not affect our right to recover from you any sum due under this contract or damages for breach of this contract.
- (u) Save as set out in these conditions and save for liability for death or personal injury resulting from our negligence and save for breach of our obligations as implied by statute, we shall not be liable for any loss or damage whether direct, indirect, consequential or economic, which might be caused by the delivery, placement or collection of a skip.

#### 16. FORCE MAJEURE

- We shall be under no liability for any loss, damage, delay or expenses caused wholly or in part by Act of God, outbreak of war, civil commotion, governmental policies or restrictions or control, including restrictions of export or import or other licences, trade or industrial disputes of whatever nature, whether or not such dispute involves us, our employees or agents, or by any other event whatsoever which is beyond our control, and in any such circumstance, we may omit goods from, or cancel your order, or postpone delivery of the goods ordered.

#### 17. BANKRUPTCY OR INSOLVENCY

- (a) (being a company) you make a proposal for or enter into a scheme of arrangement or a composition with your creditors or fail to comply with a statutory demand or become insolvent or pass a resolution for your winding up or a petition for your winding up is presented or you are wound up (otherwise than for the purpose of amalgamation or reconstruction), or
- (b) (being a company) a petition for an administration order is presented against you or a receiver or administrative receiver is appointed over any of your assets or undertakings or circumstances arise which would entitle the court or a creditor to appoint a receiver or administrative receiver over your undertaking or any material part thereof, or
- (c) (being an individual, sole trader or a partner in a partnership) you are or become insolvent or an application is made to the court under Part VIII of the Insolvency Act 1986 for an interim order for the purpose of a voluntary arrangement or an order is made for the administration of your estate pursuant to Part VI of the County Courts Act 1984 or a bankruptcy petition is presented by or against you or you are adjudged or declared bankrupt, or
- (d) (whether you are a company, a partnership or an individual) you take or suffer any similar action in consequence of debt, then we may forthwith stop any goods in transit and/or suspend further deliveries and/or terminate all contracts with you without prejudice to the continuation of all our rights hereunder and to any existing claims. Where goods have been delivered but not paid for, the price shall become immediately due and payable.

#### 18. NON-WAIVER OF RIGHTS

- The failure by either you or us to exercise or enforce any rights conferred by the contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such right at any time thereafter.

#### 19. HEALTH & SAFETY

- (a) Certain products supplied by us could if incorrectly used, give rise to risks to health and safety. Information in respect of such products is available from us on request. You undertake to us that you will ensure compliance so far as is reasonably practicable by your employees, agents, licensees and customers with any instructions given by us or the manufacturer or by law for the purpose of ensuring that the goods will be safe and without risk to health when properly used and will take any other steps or precautions, having regard to the nature of the goods, as are necessary to preserve the health and safety of person handling, using or disposing of them.
- (b) You also agree that we have no liability to you (or any person to whom you permit access to the goods) for any use or abuse of any goods we sell you if they are used without due care and with regard to both sensible practices and any warning or instructions available to you from us or from the container or packaging on the goods.

#### 20. DATA PROTECTION

- (a) All your personal data which we hold will be obtained and processed lawfully and fairly for the purposes of (i) processing your orders (both present and anticipated), (ii) checking your credit status, if you seek or wish to have or do have a credit account with us and (iii) notifying you of any special offers which we believe may be of interest to you (unless you ask us not to notify you of such offers, in which case the data will not be held for that purpose).
- (b) On written request made by you at any time, we will remove all or any of your personal details held on our computer system. If this is done, we may forthwith cancel or suspend your credit account.
- (c) None of your personal data will be disclosed to any third party or used for any other purpose than those set out above unless ordered by a Court or we are otherwise obliged by law to do so. We will not keep or seek or retain data irrelevant to those purposes. You accept that we may be obliged by law or order to pass on to third parties information for the prevention of fraud, crime, money-laundering and the good administration of justice without your consent or knowledge.
- (d) We will strive to ensure that your personal data which we keep is accurate and up to date and we will not keep it for longer than is necessary.
- (e) We will take appropriate security measures against unauthorised access to, alteration, disclosure and destruction and against accidental loss or destruction of your personal data.
- (f) We acknowledge and recognise your rights under the Data Protection Act 1984 for information from us.

#### 21. NOTICES

- (a) Any notices given under or pursuant to any term or condition of any sale of goods from us to you shall be in permanent readable form and shall be deemed properly delivered if addressed to the party concerned at its principal place of business or last known address or registered office. Any notice hereunder shall be deemed to have been delivered, if sent by 1st-class post, 2 days after posting, and if sent by fax, on the next working day after transmission.
- (b) Notwithstanding sub-clause 21(a) above, we may by e-mail accept or confirm your orders.

#### 22. APPLICABLE LAW AND JURISDICTION

- Any Contract with us shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under the contract.