

TERMS AND CONDITIONS FOR THE SALE OF GOODS BY PROMAT UK LIMITED

Please read carefully

1. DEFINITIONS AND INTERPRETATION

1.1. The definitions and rules of interpretation in this condition apply in these conditions:

'Bespoke Goods'	means any Goods (including any part or parts of them) which are produced wholly or partly according to Customer Specifications, or are to be sited wholly or partly according to Customer Specifications;
'Business Day'	means a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business;
'Contract'	means any contract between Promat and the Customer for the sale and purchase of Goods, incorporating these conditions;
'Customer'	means the person, firm or company purchasing the Goods from Promat;
'Customer Specifications'	means any specifications, plans, drawings or designs created by the Customer (or on behalf of the Customer with the Customer's instructions) including specifications, drawings or designs created by Promat on behalf of the Customer with the Customer's instructions;
'Credit Limit'	means the Customer's credit limit, to be notified to the Customer by Promat in writing from time to time;
'Destination'	means the place specified in the quotation or order confirmation where the Goods are to be taken;
'Goods'	means any goods agreed in the Contract to be supplied to the Customer by Promat (including any part or parts of them);
'Incoterms®'	means the international rules for the interpretation of trade terms prepared by the International Chamber of Commerce, being Incoterms® 2000 and any modifications or amendments thereto from time to time in force. Incoterms® shall apply to the interpretation of trade terms used in the Contract;
'IP Rights'	means patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights

to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

'Promat'

means Promat UK Limited whose registered office is at The Sterling Centre, Eastern Road, Bracknell, Berkshire RG12 2TD (company registration number 01785071);

'Specifications'

means any specifications, plans, drawings or designs for Goods which are not Bespoke Goods.

- 1.2. A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3. Words in the singular include the plural and in the plural include the singular.
- 1.4. A reference to one gender includes a reference to the other gender.
- 1.5. 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.
- 1.6. Condition headings do not affect the interpretation of these conditions.

2. BASIS OF SUPPLY

- 2.1. Subject to any variation under Condition 2.2 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2. These conditions apply to all Promat's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing by an authorised officer of Promat. The Customer acknowledges that it has not relied on, and shall have no right or remedy in respect of, any statement, promise, assurance, warranty or representation made or given by or on behalf of Promat which is not set out in the Contract or otherwise agreed in writing by an authorised officer of Promat. Nothing in this Condition 2.2 shall exclude or limit Promat's liability for fraudulent misrepresentation.
- 2.3. Each order or acceptance of a quotation for Goods by the Customer from Promat shall be deemed to be an offer by the Customer to buy the Goods subject to these conditions and which offer Promat shall be free to accept or reject at its sole discretion.
- 2.4. No order placed by the Customer shall be deemed to be accepted by Promat until an order confirmation is issued by an authorised officer of Promat or (if earlier) Promat delivers the Goods to the Customer. Any quotation is valid for a period of 30 calendar days (or as specified on the quotation) only from its date, provided that Promat has not previously withdrawn it by notice in writing to the Customer.
- 2.5. The Customer shall:
 - 2.5.1. ensure that the terms of its order and any applicable Specifications are complete and accurate and provide to Promat all necessary information relating to the Goods within a sufficient time to enable Promat to perform its obligations in accordance with the Contract;

2.5.2. check any acknowledgement of order by Promat and any subsequent correspondence to ensure that the Specifications for Goods are as requested by the Customer and the Customer shall advise Promat immediately in the event of any discrepancies.

2.6. No order that has been accepted by Promat issuing its order confirmation, may be cancelled by the Customer except at the sole discretion of Promat and agreed in writing by an authorised officer of Promat and on terms that the Customer shall indemnify Promat in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Promat as a result of cancellation.

3. DRAWINGS, QUANTITIES & INTELLECTUAL PROPERTY

3.1. The quantity and description of the Goods shall be as set out in Promat's order confirmation.

3.2. All samples, drawings, descriptive matter, specifications and advertising issued by Promat and any descriptions or illustrations contained in Promat's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

3.3. Any error or omission in any sales literature, quotation, order confirmation, invoice or other document issued by Promat shall be subject to correction without liability on the part of Promat.

3.4. All intellectual property rights (including patents, copyright, rights in a design and trade marks) in the Goods are the property of Promat and nothing in the Contract shall be construed as conferring any rights in favour of the Customer in relation to the intellectual property rights in the Goods or constituting any assignment or licence thereof.

3.5. If the Goods are to be manufactured by Promat or any process is to be applied to the Goods by Promat in accordance with a specification submitted by the Customer, the Customer shall indemnify Promat in respect of any liability which arises in connection with the compliance with the Customer's specification.

3.6. Promat reserves the right to make any changes in the specification of the Goods ordered which are required to conform with any applicable safety, quality or other statutory requirements.

4. PRICES

4.1. On request by the Customer, Promat may provide a fixed price quotation. No quotation shall be deemed to be a fixed price quotation unless specifically stated in writing.

4.2. Save for fixed price quotations and unless otherwise agreed in writing by an authorised officer of Promat, the price for the Goods shall be the price specified in the price list supplied by Promat and in effect at the date of dispatch and as confirmed in the quotation made by Promat or the order confirmation issued by Promat.

4.3. Unless otherwise agreed in writing by the parties, all prices (including fixed price quotations) are for sale of the Goods from Promat's premises or a mutually nominated warehouse.

4.4. Where Promat agrees to deliver the Goods outside of the United Kingdom, the price shall be stated for supply of the Goods in accordance with the Incoterm stated in the quotation or the order confirmation. For the avoidance of doubt, the following Incoterms® may apply as stated in the quotation or order confirmation: CIF Destination, CPT Destination, DDU Destination, EXW Destination, FCA Destination, FOB Destination.

4.5. Save for fixed price quotations, Promat reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any reasonable increase in the cost to Promat which is due to any factor beyond its control or any change in delivery

dates, quantities or specifications for the Goods which is requested by the Customer or required by law, or any adjustments or alterations in currency rates of exchange.

5. DELIVERY

- 5.1 Delivery EXW Destination, shall take place at Promat's premises or Promat's nominated warehouse. All other delivery shall be in accordance with the applicable Incoterm stated in the quotation or order confirmation
- 5.2 The conditions at the Destination will be that of hard road. Promat reserves the right for its drivers and carriers to refuse to take their vehicles on to the Destination if in the opinion of the driver or carrier the conditions at the Destination are such as to constitute a danger to the vehicles, the Goods or to any persons or property in which event the provisions of Condition 5.6 apply. Promat reserves the right to charge for additional transport costs caused by reasons beyond their control.
- 5.3 In accordance with Incoterms®, where the Customer is responsible for the loading and unloading of the Goods, the Customer shall provide adequate and appropriate equipment and manual labour at the Destination for the loading and unloading of the Goods and the Customer shall indemnify Promat against all claims whatever arising from such loading and unloading operations.
- 5.4 Any delivery date or periods given by Promat in the order confirmation are intended to be an estimate. Time for delivery shall not be of the essence.
- 5.5 Subject to the other provisions of these conditions Promat shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Promat's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 calendar days.
- 5.6 If for any reason the Customer fails to accept delivery of any of the Goods, or, where delivery is stated to be EXW Destination, fails to collect and load the Goods at the nominated place for collection, or Promat is unable to deliver the Goods on time pursuant to the occurring of events in Condition 5.2 or Condition 5.3 or because the Customer has not provided appropriate instructions, documents, licences or authorisations, then:
 - 5.6.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by Promat's negligence);
 - 5.6.2 the Goods shall be deemed to have been delivered;
 - 5.6.3 Promat may store the Goods until physical delivery, whereupon the Customer shall be liable for all related costs and expenses (including storage and insurance);and:
 - 5.6.4 in the event that the Customer does not make payment for the Goods in accordance with Condition 8 and the Goods remain in the possession of Promat, without prejudice to any other right or remedy that it may have, Promat may terminate the Contract in accordance with Condition 13 and Promat shall have the right to sell the Goods in question to a third party and charge the Customer for any shortfall below the Contract price; or
 - 5.6.5 Promat may at its discretion and provided the refused or returned Goods are standard, from the current range on sale by Promat and are returned to Promat in unopened shipping cartons, treat the Contract in relation to such returned Goods as cancelled on payment by the Customer of a cancellation fee of 33% (Thirty-three percent) of the original invoiced value of the returned Goods. The parties confirm that

this represents a genuine pre-estimate of the loss that Promat would suffer in the event of such cancellation of the Contract.

- 5.7 If Promat delivers to the Customer a quantity of Goods of more or less than the agreed order quantity, the Customer shall not be entitled to object or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate. Any Goods representing an over delivery and not paid for by the Customer must be returned to Promat. Promat will pay for the cost of transporting any Goods so returned.
- 5.8 Promat may deliver the Goods by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 5.9 Each installment shall be a separate Contract and no cancellation or termination of any one Contract relating to an installment shall entitle the Customer to repudiate or cancel any other Contract or installment.

6. NON-DELIVERY

- 6.1 The quantity of any consignment of Goods as recorded by Promat on despatch from Promat's (or its manufacturer's) place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary within three Business Days in writing to Promat's Customer Relations Department.
- 6.2 Promat shall not be liable for any non-delivery of Goods (even if caused by Promat's negligence) unless the Customer gives written notice to Promat of the non-delivery within three Business Days of the date when the Goods would in the ordinary course of events have been received.
- 6.3 Any liability of Promat for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. OWNERSHIP & RISK

- 7.1 The Goods are at the risk of the Customer from the time of delivery in accordance with Condition 5 or if the Customer fails to take delivery of the Goods, the time when delivery should have been rendered in such manner.
- 7.2 Legal and beneficial ownership in the Goods shall not pass to the Customer until Promat has received payment in full in cash or cleared funds all sums due to it in respect of the Goods and all other sums which are or become due to Promat from the Customer on any account including interest on any overdue amounts and all collection costs and expenses relating to such overdue sums.
- 7.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
 - 7.3.1 hold the Goods on a fiduciary basis as Promat's bailee;
 - 7.3.2 store the Goods (at no cost to Promat) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Promat's property;
 - 7.3.3 subject to Condition 7.5, not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 7.3.4 maintain the Goods in satisfactory condition and keep them insured on Promat's behalf for their full price against all risks to the reasonable satisfaction of Promat. On request the Customer shall produce the policy of insurance to Promat.

- 7.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
- 7.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and
 - 7.4.2 any such sale shall be a sale of Promat's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale; and
 - 7.4.3 the Customer shall set aside the proceeds of sale of the Goods in a separate bank account on behalf of Promat and designated in Promat's name.
- 7.5 The Customer may use the Goods in any manufacturing or other process in the normal course of its business before payment in full has been made to Promat but upon so doing the Customer shall set aside the price of the Goods so used in a separate bank account on behalf of Promat and designated in Promat's name.
- 7.6 If the Goods or any part thereof are incorporated in or used as material for or in manufacturing other products before payment in full to Promat ownership in the whole of such products shall vest in and remain with Promat until such products have been sold and all Promat's rights hereunder in relation to the Goods and/or the proceeds of sale thereof shall extend to such products. Promat's rights hereunder shall be in addition to any and all other rights it may have against the Customer at law or in equity.
- 7.7 The Customer's right to possession of the Goods shall terminate immediately if:
- 7.7.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
 - 7.7.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between Promat and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
 - 7.7.3 the Customer encumbers or in any way charges any of the Goods.
- 7.8 Promat shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Promat.
- 7.9 The Customer grants Promat, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 7.10 Where Promat is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by Promat to the Customer in the order in which they were invoiced to the Customer.

- 7.11 On termination of the Contract, howsoever caused, Promat's (but not the Customer's) rights contained in this Condition 7 shall remain in effect.
- 7.12 Nothing in this Condition 7.12 shall confer any right on the Customer to return goods supplied by Promat or to refuse or delay any payment for them.

8. PAYMENT

- 8.1 Promat shall invoice the Customer for the price of the Goods in accordance with Condition 4. Promat may invoice the Customer:
- 8.1.1 on dispatch of the Goods (or, where the Goods are to be provided in installments, on dispatch of each installment); or,
 - 8.1.2 where delivery is stated to be EXW Destination at the point when the Goods are made available for collection by the Customer at the nominated place for collection,
- unless otherwise agreed in writing by an authorised officer of Promat.
- 8.2 Subject to Conditions 8.5 and 9, payment of the price for Goods is due in GBP£ (Pounds Sterling) unless otherwise agreed by the parties in writing from time to time:
- 8.2.1 on the last Business Day of the month following the month in which the invoice is sent to the Customer; or
 - 8.2.2 in accordance with the terms of payment as may be agreed in writing by an authorised officer of Promat from time to time.
- 8.3 Time for payment shall be of the essence of the Contract.
- 8.4 No payment shall be deemed to have been received until Promat has received cleared funds.
- 8.5 Without prejudice to any right to claim for interest under the law or any such right under the Contract, all sums payable to Promat under the Contract shall become due immediately on its termination, despite any other provision.
- 8.6 The Customer shall make all payments due under the Contract in full. In the event that the Customer disputes the payment of all or part of an invoice the Customer shall immediately give notice to Promat in writing stating the nature of the dispute, the amount disputed and provide reasonable supporting evidence of such dispute. The parties shall negotiate in good faith to resolve any dispute. Where only part of an invoice is disputed, the Customer shall pay the undisputed part of the invoice on or before the due date for payment in accordance with Condition 8.2. In the event that any disputed sum shall be determined by a court or subsequently agreed by the Customer to be payable, the Customer shall pay interest on such sum in accordance with Condition 8.7 calculated from the date the payment should have been made pursuant to Condition 8.2.
- 8.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Promat any sum due pursuant to the Contract, Promat may charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Lloyds Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. Promat may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9. CREDIT LIMIT

- 9.1 The Customer agrees not at any time to permit the aggregate value of unpaid invoices for the Goods to exceed the Credit Limit. In the event that the aggregate value of unpaid invoices for the Goods exceeds the Credit Limit at any time, the Customer will (at Promat's option)

immediately make payment to Promat of outstanding invoices to bring aggregate unpaid invoices to an amount below the Credit Limit and/or the Customer will make payment in full for any further order which will cause the Credit Limit to be exceeded in advance of delivery of the same.

- 9.2 The Customer acknowledges and accepts that the Credit Limit may be reduced and/or increased at any time on written notice by an authorised officer of Promat.
- 9.3 Promat is entitled on written notice to terminate the Contract or suspend the supply of Goods to the Customer with immediate effect in the event that the Customer exceeds any Credit Limit and/or is in breach of any provisions in connection with the Contract.
- 9.4 In the event that Conditions 9.2 or 9.3 apply at any time, all invoices will immediately be due and payable and all orders will be invoiced and payable in accordance with Condition 8.2.
- 9.5 The Customer warrants that all financial and other information delivered to Promat prior to entering into the Contract is true and accurate and not misleading. The Customer undertakes to immediately notify Promat in writing in the event that any circumstances arise that may affect the ability of the Customer to fulfil its obligations in accordance with the Contract.

10. RETURN OF GOODS

- 10.1 The provisions of this Condition 10 solely apply to the return of Goods which, on delivery, correspond with their specification. The return of Goods which do not on delivery correspond with their specification shall be subject to Condition 12.
- 10.2 Promat, at its sole discretion and subject to the prior arrangement of a Director of Promat, may accept the return of any standard Goods (which for the purpose of this Condition 10.2 means Goods which are not Bespoke Goods) from the current range on sale by Promat, provided the Customer returns them at his own risk and expense to the distribution centre nominated by Promat, in their original packaging and in a resalable condition, and treat the Contract in relation to such returned goods as cancelled on payment by the Customer of a cancellation fee of 33% (Thirty-three percent) of the original invoiced value of the returned goods. The parties confirm that this represents a genuine pre-estimate of the loss that Promat would suffer in the event of such cancellation of the Contract. Promat reserves the right to inspect any standard Goods the Customer wishes to return, prior to Promat agreeing to accept their return. Promat will not accept the return of any Goods that have exceeded their expiry date, as indicated on the Goods by means of a date stamp.
- 10.3 Goods which are also Bespoke Goods may not be returned except as set out in Condition 12.

11. BESPOKE GOODS

- 11.1 Where the Goods are Bespoke Goods the Customer shall:
 - 11.1.1 be responsible for ensuring that any Customer Specifications for such Goods are in accordance with its requirements; and,
 - 11.1.2 check any acknowledgement of order by Promat and any subsequent correspondence to ensure that the Customer Specifications for such Goods have been and are being correctly followed and the Customer shall advise Promat immediately in the event of any discrepancies;
- 11.2 The Customer agrees that Promat shall:
 - 11.2.1 when producing any Bespoke Goods, adhere to the dimensions stated in any Customer Specifications to the exclusion of any other dimensions and the Customer further agrees that Promat shall not be liable for any unsatisfactory element of the finished Bespoke Goods which results, directly or indirectly, from doing so; and,

- 11.2.2 when siting any Bespoke Goods, adhere to the dimensions stated in any Customer Specifications to the exclusion of any scale dimensions and the Customer further agrees that Promat shall not be liable for any unsatisfactory element of siting of the Bespoke Goods which results, directly or indirectly, from doing so. The Customer shall verify all site dimensions and notify to Promat any discrepancies between the actual site dimensions and those shown in the Customer Specifications.
- 11.3 If the Customer wishes to request a change to any Customer Specifications then it shall notify Promat by notice in writing.
- 11.4 Within sixty working days of receiving a written notice under Condition 11.3, Promat shall prepare for the Customer a written estimate of any increase or decrease in the price of the Goods, and of any effect that the requested change will have on production of the Goods.
- 11.5 From time to time Promat may discuss Customer Specifications and requirements for Bespoke Goods with the Customer. Promat will contribute to such discussions in good faith and will provide opinions to the best of its knowledge but the Customer accepts that such discussions are conducted on an informal basis and that Promat shall not owe any duty of care to the Customer in respect of such discussions.
- 11.6 The Customer accepts that it must take specialist advice as to:
- 11.6.1 the suitability of any Customer Specifications for any particular purpose; and,
- 11.6.2 the suitability of the Bespoke Goods for any particular purpose.
- 11.7 Any IP Rights arising:
- 11.7.1 in any specifications, plans, drawings or designs created by Promat for any Customer Specifications; or,
- 11.7.2 as result of the manufacture of any Bespoke Goods,
- shall be proprietary to Promat.

12. QUALITY

- 12.1 Promat warrants that (subject to the other provisions of these conditions) Goods (including Bespoke Goods) shall, on delivery, correspond with their specification.
- 12.2 Promat shall not be liable for a breach of any of the warranties at Condition 12.1 unless:
- 12.2.1 the Customer gives written notice of the defect to Promat within three Business Days of delivery and Promat issues prior authorisation for the return of faulty or damaged Goods; and
- 12.2.2 the Customer returns such Goods at the Customer's cost to Promat within ten Business Days of the date of notification of such defect for Promat to examine the Goods.
- 12.3 Promat shall not be liable for a breach of any of the warranties in Condition 12.1 if:
- 12.3.1 the same arises in connection with a defect in the Goods resulting from any drawing description or specification supplied by, or instructions of, the Customer;
- 12.3.2 the Customer makes any further use of such Goods after giving such notice;
- 12.3.3 the defect arises because the Customer failed to follow Promat's oral or written instructions as to the storage or use of the Goods or (if there are none) good trade practice or otherwise comply with Condition 14.2; or

12.3.4 the Customer alters or repairs such Goods without the written consent of Promat; or

12.3.5 any defect arising from fair wear and tear, willful damage, negligence, failure to follow Promat's instructions or alteration of the Goods without Promat's approval.

12.4 No liability of Promat shall arise in connection with Condition 12.1 if the total price for the Goods has not been paid by the due date for payment.

12.5 Subject to Condition 12.2, Condition 12.3 and Condition 12.4, if any of the Goods do not conform with any of the warranties in Condition 12.1 Promat shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate.

12.6 If Promat complies with Condition 12.5 it shall have no further liability for a breach of any of the warranties in Condition 12.1 in respect of such Goods.

12.7 If the Customer does not notify Promat in accordance with Condition 12, the Customer shall not be entitled to reject the Goods, no liability for such defect or failure shall arise, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

13. TERMINATION

13.1 Promat shall be entitled to terminate the Contract on notice with immediate effect:-

13.1.1 if the Customer shall be in breach of any of its obligations in connection with the Contract and in the case of a breach capable of remedy, shall not have remedied the same within 14 Business Days after being notified in writing of such breach;

13.1.2 on the occurrence of any of the events referred to in Conditions 7.7.1 to 7.7.3, inclusive.

14. STORAGE, FIXING, HEALTH & SAFETY

14.1 Nothing in these conditions, nor any compendiums, brochures, price lists, instructions, method statements or other documents or designs issued by or on behalf of Promat shall create or be deemed to create any obligation, whether express or implied, on Promat under the Construction (Design and Management) Regulations 2007 whether, without limitation, as designer or contractor under those Regulations.

14.2 The Customer will store and use all Goods supplied to the Customer in accordance with:

14.2.1 the manufacturer's instructions set out in the latest written recommendation of Promat or (if there are none) good trade practice;

14.2.2 any relevant British Standard Codes of Practice;

14.2.3 all health and safety legislation, Codes of Practice, and guidance from the Health and Safety Executive as time to time may be in force; and,

14.2.4 the Construction (Design and Management) Regulations 2007 and any modifications or amendments thereto from time to time in force.

15. LIMITATION OF LIABILITY

15.1 Subject to Condition 5, Condition 6 and Condition 12, the following provisions set out the entire financial liability of Promat (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- 15.1.1 any breach of these conditions;
 - 15.1.2 any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
 - 15.1.3 any representation, statement or act or omission including negligence arising under or in connection with the Contract.
- 15.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 15.3 Nothing in these conditions excludes or limits the liability of Promat:
- 15.3.1 for death or personal injury caused by Promat's negligence; or
 - 15.3.2 under section 2(3), Consumer Protection Act 1987; or
 - 15.3.3 for any matter which it would be illegal for Promat to exclude or attempt to exclude its liability; or
 - 15.3.4 for fraud or fraudulent misrepresentation.
- 15.4 Subject to Condition 15.2, Condition 15.3 and Condition 15.5 Promat's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price.
- 15.5 Promat shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for indirect or consequential loss, damage or liability whatsoever (howsoever caused) which arise out of or in connection with the Contract.

16. FORCE MAJEURE

- 16.1 Promat reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer and shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial or labour disputes (whether involving the workforce of Promat or any other party), failure of a utility service or transport network, failure or delays in obtaining quality and/or Goods approvals, inability or delay in obtaining supplies of adequate or suitable materials including default of suppliers or subcontractors, restraints or delays affecting carriers, act of God, war or national emergency, acts of terrorism, protests, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, epidemic, flood, or storm, provided that, if the event in question continues for a continuous period in excess of 180 calendar days, the Customer shall be entitled to give notice in writing to Promat to terminate the Contract.

17. NOTICES

- 17.1. All legal notices between the parties about the Contract shall be in writing in the English language and delivered by hand or sent by pre-paid first class post, recorded delivery, commercial courier or sent by fax. Communications may also be delivered by e-mail and will only be valid if the communication is in writing, signed by an authorised officer of the party, scanned and sent as a .pdf document by e-mail.
- 17.1.1 (in case of communications to Promat) to its registered office or such changed address as shall be notified to the Customer by Promat; or

17.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to Promat by the Customer.

17.1.3 Communications shall be deemed to have been received:

17.1.3.1 if sent by pre-paid first class post or recorded delivery, two Business Days after posting (exclusive of the day of posting); or

17.1.3.2 if delivered by hand, on the day of delivery; or

17.1.3.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or

17.1.3.4 if sent by fax or by email on a Business Day prior to 4.00 pm, at the time of transmission and otherwise on the next Business Day.

17.1.4 Communications addressed to Promat shall be marked for the attention of Promat's Customer Relations Department.

18. ASSIGNMENT

18.1 The Customer shall not, without the prior written consent of Promat, assign, transfer, charge, mortgage, subcontract or deal in any manner with all or any of its rights or obligations under the Contract. Promat may at any time assign, transfer, charge, mortgage, 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 or agent.

19. GENERAL

19.1 Each right or remedy of Promat under the Contract is without prejudice to any other right or remedy of Promat whether under the Contract or not.

19.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19.3 Failure or delay by Promat in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

19.4 Any waiver by Promat of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default of the same or any other provision and shall in no way affect the other terms of the Contract.

19.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

19.6 The 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, the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).