



Designers and Manufacturers of Vehicle
Door Hardware and System Solutions

TriMark Europe Limited
Conditions of Sale
Issue 3: Updated 1 December 2015

1.0 INTRODUCTION

- 1.1 The following Conditions of Sale ("Conditions") shall apply to all contracts between the Company and the Customer and shall override any terms and conditions stipulated, incorporated or referred to by the Customer whether in the sale, Order or in any negotiations and these Conditions shall be binding upon the Company and the Customer.
- 1.2 If the terms and conditions of the Customer are in any way inconsistent with these Conditions, the Customer's acceptance of any of the Goods or the giving by the Customer of any delivery instructions shall constitute unqualified acceptance by a Customer of these Conditions.

2.0 DEFINITIONS

- 2.1 "*Bespoke Goods*" shall have the meaning set out in Condition 8.1.
- 2.2 "*Bespoke Tooling*" shall have the meaning set out in Condition 8.2.
- 2.3 "*the Company*" means TriMark Europe Limited.
- 2.4 "*Conditions*" means these conditions of sale
- 2.5 "*the Contract*" means the contract for the sale of the Goods by the Company to the Customer incorporating these Conditions arising from the Company's acceptance of the Customer's Order.
- 2.6 "*the Customer*" means the person firm or corporation with whom the Company contracts for the sale of the Goods upon the terms of these Conditions.
- 2.7 "*Delivery Note*" means the Company's standard delivery note, examples of which are on the website.
- 2.8 "*the Goods*" means the articles detailed within the Contract.
- 2.9 "*Intellectual Property Rights*" means all intellectual property rights including, without limitation, patents, utility models, copyrights, registered designs, unregistered design rights, applications for registration of any of these and the right to apply for any of these in any part of the world, rights in know how and other confidential information.
- 2.10 "Quotation" is the offer of a price along with other terms and conditions of sale offered to the Customer
- 2.11 "Order" means the Customer's order for the Goods as set out in the Sales Order Acknowledgement.
- 2.12 "Sales Order Acknowledgement" means the Company's acknowledgement in its standard format.
- 2.13 "Price" means the price of the Goods as set out in the Order Sales Acknowledgement and/or the Quotation and as varied from time to time.
- 2.14 "*working day*" means the day of the week except a day which is a Saturday, a Sunday or a bank, public or statutory holiday.

3.0 PRICES

- 3.1 All prices are exclusive of value added tax, which will be charged at the rate applicable.
- 3.2 The Company shall be entitled to adjust the Price before or after the Contract is entered into to reflect the additional cost to the Company of supplying any Goods caused by any reason beyond the control of the Company including (without limitation) changes in exchange rates or the action of any government or authority or increases in labour, raw materials, production, transport and insurance costs.
- 3.3 In the case of Goods to be delivered unless expressly stated to the contrary the Price excludes carriage to that destination. Cases and other packing materials that are used in the delivery of the Goods to the Customer will be charged for.

4.0 FORMATION OF CONTRACT

- 4.1 Unless otherwise expressly stated in writing, a Quotation issued by the Company shall not constitute an offer and shall not be binding until accepted by the Company.
- 4.2 Quotations shall only be valid for a period of 30 days from the date of issue and may be withdrawn or altered by the Company within such period at any time without notice. No Contract shall be made by the acceptance by the Customer of any quotation made by the Company.
- 4.3 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 4.4 Any Quotation is made on the basis that Orders will be placed by the Customer in the quantities stated in the Sales Order Acknowledgement. Should the Customer place an Order for part quantities only, the Company reserves the right to submit a revised Quotation.
- 4.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.

5.0 TITLE TO THE GOODS

- 5.1 Title to and property in the Goods shall remain vested in the Company (notwithstanding their delivery and the passing of the risk therein to the Customer) until:
- 5.1.1 the Price of the Goods; and
- 5.1.2 all other money due from the Customer to the Company on any other account or pursuant to any other contract, has been paid discharged or satisfied in full.
- 5.2 Until the title to and property in the Goods pass to the Customer the following provisions shall apply:
- 5.2.1 the Company may at any time without prior notice to the Customer repossess and resell the Goods if any of the events specified in condition 13 below occurs or if any sum due from the Customer to the Company under the Contract or on any other account or pursuant to any other contract is not paid on the due date for payments. For the purpose of exercising its right under this subparagraph, the Company, its employees or agents together with any vehicles considered by the Company to be necessary shall be entitled at any time without prior notice to the Customer to free and unrestricted entry upon and access to the Customer's premises and/or other location where any of the Goods are situated;
- 5.2.2 the Customer shall store the Goods in a proper manner in conditions, which adequately protect and preserve them without charge to the Company and ensure that they are clearly identified as belonging to the Company. The Company

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shall be entitled to examine the Goods in storage at any time during normal business hours and upon giving the Customer reasonable notice of its intention to do so and to enter upon any premises owned or occupied or access to which are controlled by the Customer for that purpose; and

5.2.3 the rights and remedies conferred upon the Company by this condition 5 are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of the Company under the Contract.

6.0 PASSING OF RISK

6.1 If the Company arranges delivery, the Goods shall be at the Customer's risk immediately on delivery to the Customer's premises or any other delivery point indicated in the Contract.

6.2 If the Customer arranges the carriage of the Goods, the Goods shall be at the Customer's risk immediately on delivery to the carrier or, if earlier, as from notification to the Customer that the Goods are ready for despatch and the Customer must insure the Goods accordingly.

7.0 BREAKAGES, SHORTAGES AND NON-DELIVERY

7.1 The Customer shall inspect the Goods immediately upon their arrival at the destination to which they are to be delivered pursuant to the Contract for the purpose of ascertaining:

7.1.1 that the number of items and packages and the quantities are as specified and the Goods are as described in the Company's Delivery Note;

7.1.2 whether the Goods have been damaged in transit; and

7.1.3 that the Goods are those specified in the Customer's Order stated on the Company's Delivery Note.

7.2 Any discrepancy between the Goods delivered and those described in the Company's Delivery Note or specified in the Customer's Order and any damage to the Goods in transit must be notified to the Company in writing within three working days of the Customer's receipt of the Goods. In the case of incomplete delivery or non-delivery of the Goods, the Customer must notify the Company in writing within three working days of the receipt (or expected receipt in the case of non-delivery) by the Customer of the Company's Delivery Note. Without prejudice to the provisions of condition 6 above, no claim in respect of non- or incomplete delivery or damage in transit will be entertained by the Company unless the Customer complies with this condition.

7.3 Where the Goods are delivered direct to the Customer by, or collected by the Customer from, the manufacturer, the Company shall not be liable for any loss or damage to the Goods whatsoever and whensoever occurring.

7.4 Credit will only be given for the Goods if the Company has issued a collection note for the Goods and a Delivery Note number has been quoted.

8.0 DESIGNS

8.1 For the purpose of constant improvement in the Company's products, the designs and specifications of the Goods (other than Goods manufactured to the Customer's specification) ("Bespoke Goods") are subject to change without notice. The Company shall endeavour, however, to notify the Customer of any changes before shipment.

8.2 Unless otherwise agreed in writing by the Company, all tools, dies, assembly fixtures or materials ("Bespoke Tooling") needed for the manufacture of Bespoke Goods remain the property of the Company and, unless initially agreed upon otherwise, shall be kept in repair without customer charges for normal repairs and upkeep for the reasonable life of the tool. The Company shall not be responsible for tooling that sits idle for more than one year.

8.3 TriMark designs and manufactures a variety of safety related components and door systems for a multitude of applications that are used for on and off-road applications. ECE 11 of the Economic Commission for Europe of the United Nations (UN/ECE) covers uniform provisions concerning the approval of vehicles with regard to door latches and door retention components. TriMark offers ECE 11 compliant door components, but the final requirements and compliance lies with the end vehicle manufacturer. Customer assumes full responsibility of the door system/components as it applies to compliance to any applicable ECE 11 requirements and also for any risk of bodily injury, death, or property damage that may arise out of the use of door system/components. Customer hereby agrees to release, acquit and forever discharge TriMark, its owners, agents, and employees from all liability from any and all loss or damage Customer may have on account of injury to Customer's person and property or the person and property of others, including death, arising out of this Order and/or the use of the door system/components, whether caused by the negligence of TriMark, its owners, employees, equipment, distributors or otherwise. Customer further agrees to indemnify and hold TriMark, its owners, employees, agents, and distributors harmless from any and all loss, damage or liability related to door system/components. This indemnification shall include, but is not limited to, reasonable attorney's fees, court costs and other expenses incurred as a result of any claim, lawsuit, or action of a governmental body, business, corporation, or other person arising from or connected with door system/components.

9.0 [INTELLECTUAL PROPERTY RIGHTS

9.1 Unless otherwise agreed in writing by the Company, all Intellectual Property Rights in the Goods (including, without limitation, any Bespoke Goods and Bespoke Tooling) shall remain vested in the Company.

9.2 If the Company agrees in writing that the Intellectual Property Rights in any Bespoke Goods or Bespoke Tooling may be transferred to the Customer, then, with effect from the date upon which the Company receives payment in full of the Price of the relevant Bespoke Goods or Bespoke Tooling:

9.2.1 the Intellectual Property Rights in the Bespoke Goods or Bespoke Tooling (as the case may be) to the extent that they have arisen from the Company's fulfilment of the relevant Contract with the Customer shall vest in the Customer; and

9.2.2 all other Intellectual Property Rights in the Bespoke Goods or Bespoke Tooling (including, without limitation, any Intellectual Property Rights existing prior to the date of the relevant Contract or arising from the Company's fulfilment of a contract with a third party) shall remain vested in the Company and the Customer shall have a non-exclusive, irrevocable, fully transferable licence under such Intellectual Property Rights for the purpose of possessing, using or manufacturing the Bespoke Goods or Bespoke Tooling, as the case may be.

9.3 The Company shall, at the Customer's expense, execute all such documents and do all such things as may be necessary to vest the Intellectual Property Rights referred to in condition 9.2.1 in the Customer.

9.4 The Company shall indemnify the Customer against any claim (an "Infringement Claim") that the possession or use of the Goods in accordance with these Conditions infringes the intellectual property rights of any third party provided that the Company is given immediate and complete control of the Infringement Claim, the Customer does not prejudice the Company's defence of the same and the Customer gives the Company all assistance reasonably requested by the Company in connection with the Infringement Claim.

9.5 Notwithstanding condition 9.4 above, the Company shall have no obligation to indemnify the Customer in respect of an Infringement Claim to the extent that the Infringement Claim arises from the manufacture of the Goods in accordance with any designs, drawings, specifications or other data, provided by the Customer.

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10.0 PERFORMANCE OF THE GOODS

- 10.1 The Goods are described in the drawings of Goods provided to, or agreed with the Customer.
- 10.2 Any figures or statements in the Contract or in any other document supplied by the Company as to the performance or capacity of the Goods are upon the assumption that they will be used in conditions suitable for their proper and effective operation and are only approximate.
- 10.3 If in the Contract the Company expressly guarantees the accuracy of such figures or statements then:
 - 10.3.1 in the event of the Goods after commissioning failing to achieve them, the Company shall be entitled to a reasonable period and to reasonable facilities to enable it to bring the Goods up to the guaranteed figures or statements and the contractual time for delivery of the Goods shall be extended for such reasonable period; or
 - 10.3.2 if by the Contract the Company undertakes only that the Goods will comply with such figures or statements subject to such margin or tolerance then, in the event of the Goods after commissioning failing to achieve and comply with such undertaking, the Company shall be entitled to a reasonable period and reasonable facilities to bring the Goods up to such figures or statements subject to such margin or tolerance, and the contractual time for delivery of the Goods shall be extended for such reasonable period.
- 10.4 Subject to the provisions of conditions 10.3.1 and 10.3.2 above, all weights, dimensions and other figures or statements as to performance or capacity contained in the Contract or in any other document supplied by the Company before or after the Contract shall be approximate only.
- 10.5 Any drawings, descriptions and illustrations contained in the Company's catalogues, price lists and other advertising matter are produced merely to present a general idea of the goods described therein and none of them shall form part of the Contract or have any contractual force, except where otherwise expressly agreed in writing.

11.0 GUARANTEE

- 11.1 If the Goods are to be supplied entirely in accordance with designs, drawings, specifications and other data supplied by the Customer and provided that the Goods are so supplied the Company shall not be liable to the Customer in contract or in tort (including breach of statutory duty) for any loss or damage the Customer may suffer because the Goods subsequently prove to be unsuitable for the purpose or purposes for which the Customer required them to prove not to be merchantable quality within the meaning of the Sale of Goods Act 1979.
- 11.2 Where the Goods supplied or any part thereof are not of the Company's own manufacture, the guarantee below shall not apply but the Company will use all reasonable endeavours to pass on to the Customer the benefit of any guarantee or warranty given by the supplier of such Goods to the Company.
- 11.3 Subject to condition 11.1 above and to the provisions of condition 10 above, if the Customer establishes to the reasonable satisfaction of the Company that:
 - 11.3.1 there is a defect in the materials or workmanship of the Goods;
 - 11.3.2 there is a failure on the part of the Company to supply the Goods in accordance with the designs, drawings, specifications or other data supplied by the Customer; or
 - 11.3.3 there is some other failure on the part of the Company in relation to the Goods to conform with the Contract, then the Company shall at its option either:-
 - 11.3.3.1 replace the Goods with goods which in all respects are in accordance with the Contract; or
 - 11.3.3.2 repair or make good such defect or failure free of charge (including all costs of transportation of the Goods to and from the parties for that purpose) to the Customer, subject in every case to the remaining provisions of this condition 11.
- 11.4 Condition 11.3 above ("the Guarantee") shall not apply:
 - 11.4.1 unless the Customer notifies the Company in writing of the alleged defect or failure immediately upon its first becoming aware, thereof and in any event within 6 months of the date upon which the risk in the Goods passed to the Customer under the provision of condition 6 above; or
 - 11.4.2 unless the Customer as soon as reasonably practicable after first becoming aware of the alleged defect or failure returns the Goods in each case where it is practicable to do so to the Company, carriage paid, for inspection examination and testing and in any other case permits the Company to have access to the Goods at the Customer's premises for such purposes; or
 - 11.4.3 if the alleged defect or failure is caused by other parts of any component or assembly into which the Goods are incorporated by the Customer.
- 11.5 If the Company elects to replace the Goods, it shall, at its own expense, deliver the replacement goods to the Customer at the address at which the defective Goods were located and the title to the defective Goods shall (if it has vested in the Customer) revert in the Company and the Customer shall make any such arrangements as may be necessary for the purpose of delivering up the defective Goods to the Company. If the Company elects to repair or make good the Goods and such work is to be carried out at the Customer's premises the Customer shall permit the Company to have such access to the Goods on such premises as the Company may require for that purpose.
- 11.6 The Guarantee is in substitution for any other legal remedy of the Customer in respect of the alleged defect or failure and the total liability of the Company under these Conditions and the Contract shall in all such cases and for all such purposes be limited to the obligation imposed by the Guarantee. Any other condition, warranty, representation or undertaking on the part of the Company as to the quality of the Goods or their fitness or suitability for any purpose however and whenever expressed or which may be implied by statute custom of the trade or otherwise is hereby excluded and the provisions of Sections 13 to 15 inclusive of the Sale of Goods Act 1979 shall not apply to the Contract except where the Customer deals as a consumer within Section 12 of the Unfair Contract Terms Act 1977.
- 11.7 Except and to the extent as provided by the Guarantee, the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or other economic loss or damage or any direct, indirect or consequential loss which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company, its employees or agents.
- 11.8 Nothing contained in this Condition shall operate so as:
 - 11.8.1 to exclude the liability of the Company for death or personal injury resulting from its negligence or that of its employees or agents;
 - 11.8.2 fraud or fraudulent misrepresentation;
 - 11.8.3 to exclude the conditions and warranties implied by Section 12 of the Sale of Goods Act 1979;
 - 11.8.4 defective products under the Consumer Protection Act 1987.

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12.0 PERFORMANCE OF THE CONTRACT

- 12.1 All dates for delivery are approximate. If, having used its reasonable endeavours to comply with any date or dates specified in the Contract for the despatch or delivery of the Goods to the Customer, the Company is unable to do so, such failure shall not constitute a breach of contract by the Company entitling the Customer to terminate the Contract and/or to claim damages against the Company and the Company shall be entitled to an extension of the time fixed for delivery which is reasonable in all circumstances.
- 12.2 If the Company so agrees, the Customer may collect the Goods in which case the Customer shall collect them within 3 days of being notified that they are ready for collection, failing which, the Company may despatch the Goods at the Customer's risk and expense or store them, in which event the Customer shall pay the Company reasonable storage charges and the Goods shall be stored at the Customer's risk. If the Customer requests the Company to delay despatch of the Goods and the Company agrees to do so, the Customer shall pay the Company's reasonable storage charges and the Goods shall be stored at the Customer's risk as from the date upon which the Goods are ready for despatch.

13.0 CUSTOMER'S DESIGNS, DRAWINGS, SPECIFICATIONS AND OTHER DATA

- 13.1 The Customer shall be solely responsible for the accuracy of its designs, drawings, specifications and other data (if any) supplied to the Company by the Customer, its employees or agents and in conformity with which the Company is to supply the Goods, notwithstanding that the Company may have examined, inspected, studied or commented to the Customer upon any such designs, drawings, specifications or other data.
- 13.2 The Customer shall indemnify the Company against all actions, proceedings, claims, costs and expenses which may be brought against or incurred by the Company by reasons of its supplying the Goods in accordance with such designs, drawings, specifications and other data, whether or not it is alleged in such actions, proceedings and claims that any patent, trade mark, design, copyright, design right, confidential information or other intellectual property or other exclusive right of any third party has been infringed.

14.0 BREACH OF CONTRACT BY OR INSOLVENCY OF THE CUSTOMER

- 14.1 If any of the following events occurs, or in the opinion of the Company is reasonably likely to occur:
- 14.1.1 the Customer commits any breach of Contract; or
 - 14.1.2 any distress or execution is levied upon any of the Goods or property of the Customer and is not paid out within 7 days; or
 - 14.1.3 the Customer (or where the Customer is a partnership any partner thereof) offers to make any arrangements with or for the benefits of its or his creditors generally or a petition is presented to make the Customer or any such partner bankrupt; or
 - 14.1.4 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;
 - 14.1.5 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;
 - 14.1.6 (being a company) 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;
 - 14.1.7 (being a company) the holder of a qualifying charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - 14.1.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - 14.1.9 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 conditions 14.1.2 to 14.1.9 inclusive;
 - 14.1.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - 14.1.11 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
 - 14.1.12 a force majeure event, in accordance with condition 15,
- the Company may without prejudice to any other rights or remedies it may have against the Customer suspend further performance of the Contract or by notice in writing to the Customer terminate the Contract.
- 14.2 Notwithstanding any suspension or termination, the Customer shall pay the Company in accordance with the Contract for all the Goods despatched by the Company prior thereto and shall indemnify the Company against any loss liability or expense incurred by the Company in connection with the Contract including (without prejudice to the generality of the foregoing) loss of profit, liabilities and expenses, including incurred in relation to third parties, in connection with the materials and tooling obtained or produced for the purposes of the Contract and the cost of labour and overhead expenses reasonably attributable to the Contract.

15.0 FORCE MAJEURE

- 15.1 If the Company is delayed or prevented from performing the Contract or any part thereof by circumstances beyond its reasonable control, including (but without limiting the generality of the foregoing) strikes, lockouts or other industrial action, inability to obtain materials or labour, power or machinery breakdown or failure, fire, flood, civil commotion or any cause of whatever kind and whenever occurring, then the Company may suspend further performance of the Contract for so long as it is so delayed or prevented and such suspension shall not constitute a breach of the Contract on the part of the Company. The Company shall notify the Customer in writing of any such suspension and if such suspension continues for more than 12 consecutive weeks, either the Company or the Customer may by notice in writing to the other, immediately terminate the Contract.

16.0 LIEN

- 16.1 Without prejudice to condition 8 above and to any other remedies of the Company, the Company shall in respect of all unpaid debts due from the Customer have a general lien on all goods and property of the Customer in its possession and shall be entitled, on the expiration of 14 days notice to the Customer, to dispose of such goods and property as it thinks fit and to apply any proceeds towards reduction of such debts.

17.0 CANCELLATION OF ORDERS

- 17.1 The Customer shall not be entitled to cancel an Order which has been accepted by the Company except upon terms which reimburse the Company for its loss of profits and all costs charges and expenses (including costs of tooling and purchase of materials) incurred by the Company in respect of the Order up to the date of receipt by the Company of written notification of cancellation by the Customer.

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18.0 PAYMENT

- 18.1 Unless the Customer has a credit account with the Company, the Contract price for the Goods shall be payable with the Customer's Order or against a pro-forma invoice.
- 18.2 Where the Customer has a credit account with the Company, payment for the Goods shall be made not later than the 30th day of the month following the month in which the Company issued the relevant invoice unless the Company has agreed in writing to extend additional credit to the Customer. The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall entitle the Company on the expiration of 7 (seven) days' notice in writing to the Customer to suspend further performance of the Contract pending payment and in addition, the Company shall be entitled without liability wholly or partly to cancel the Contract or any other contract between the Company and the Customer without prejudice to any other remedy available to the Company.
- 18.3 If the Customer wishes to open a credit account with the Company, it must provide credit references required by the Company which, unless otherwise stated, shall be one bank reference and two trade references.
- 18.4 Where the Goods are delivered by instalments, the Customer shall pay for each instalment in accordance with the terms of this condition 16.
- 18.5 Unless otherwise agreed in writing, the Customer shall not be entitled to set off against any monies due to the Company under the Contract, any amount claimed by or due to the Customer from the Company whether pursuant to the Contract or on any other account whatsoever.
- 18.6 The Company shall be entitled to interest (as well as before as after any judgement) on any part of the Price not paid by its due date from that date until actual payment, at the rate of 4% per annum above Barclays Bank plc's base lending rate prevailing from time to time during such period.
- 18.7 The Company, may by notice in writing to the Customer, declare all other sums owing by the Customer to the Company (whether under the Contract or any other contracts or on any other account) which at the date of the notice are not immediately due and payable, to become immediately due and payable and the Customer shall pay the same to the Company accordingly.

19.0 ASSIGNMENT AND OTHER DEALINGS

- 19.1 The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under these Conditions or the Contract.
- 19.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under these Conditions or the Contract without the prior written consent of the Company.

20.0 SEVERANCE

- 20.1 If any provision or part-provision of these Conditions or the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of these Conditions or the Contract.

21.0 THIRD PARTY RIGHTS

- 21.1 A person who is not a party to the Contract shall not have any rights to enforce its terms.

22.0 VARIATION

- 22.1 Except as set out in these Conditions, no variation of these Conditions or the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Company.

23.0 WAIVER

- 23.1 The rights and remedies of the Company in respect of the Contract or in respect of any failure by the Customer to observe or comply with terms thereof, shall not be diminished, waived or extinguished by the granting or any indulgence, forbearance or extension of time by the Company nor by any failure of or delay by the Company in asserting or exercising any such rights or remedies.

24.0 LAW AND JURISDICTION

- 24.1 The Contract shall be governed by and construed in all respects in accordance with English Law and the Company and the Customer submit themselves to the exclusive jurisdiction of the English Courts.

25.0 HEADINGS

- 25.1 The headings to these Conditions are inserted for ease of reference and shall not affect their construction.

26.0 NOTICES

- 26.1 Any notice authorised or required to be given pursuant to these Conditions shall, in the case of a notice to the Company, be sent to it at its registered office and shall in the case of a notice to the Customer be sent to the Customer at its registered office if the Customer is a company and in any other case to the address of the Customer last known to the Company. Any such notice may be given by post or facsimile transmission. To prove service in the case of a notice given by post it shall be sufficient to show that the notice was despatched by first class recorded delivery service in a correctly addressed and adequately stamped envelope. To prove service in the case of a notice given by facsimile transmission it shall be sufficient to show that it was made to the correct telephone number. Service shall be deemed to have been effected 24 hours after despatch by post or facsimile transmission.

THE ABOVE TERMS AND CONDITIONS OF SALE SHOULD BE LEGIBLE WHEN TRANSMITTED BY FAX

IF REQUIRED PLEASE CONTACT THE COMPANY ABOVE TO RECEIVE EITHER
AN ELECTRONIC COPY OR ALTERNATIVELY A POSTAL COPY

ALTERNATIVELY A COPY OF THIS DOCUMENT CAN BE FOUND AT

<http://www.trimarkcorp.com/tme/Distribution/en/commercial.aspx#terms>

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