



NILORN'S CONDITIONS OF SALE

THE BUYER SHOULD PAY ATTENTION TO CONDITIONS 3 TO 11 & 13

1. INTERPRETATION

In these Conditions, unless the context requires otherwise, the following definitions and rules of interpretation in Condition 1 shall apply:-

1.1 The following words shall have the following meanings:

Account: the credit account (if any) provided to the Buyer by Nilorn;

Agreed Artwork: any drawing, text, photograph, design or any other visuals or materials agreed between the Buyer and Nilorn to be printed, embroidered or pressed on, or to form part of, the Goods;

Additional Terms: any terms varying or adding to the Conditions that are included within the Order Acknowledgement or otherwise agreed in Writing by Nilorn, including any agreed variations to the Order;

Buyer: the person entering into a Contract, whose details appear in the Order and/or Order Acknowledgement;

Conditions: these terms and conditions, as amended from time to time;

Contract: a legally binding contract pursuant to Condition 2 (consisting of a Nilorn accepted Order, Order Acknowledgement, the Conditions and any Additional Terms) between Nilorn and the Buyer for the purchase goods and/or services;

Customer: a business or individual who purchase goods from the Buyer and requires Nilorn's Goods and/or Services to form part of the Buyer's supply of products to the Customer, who may also enter into a Framework Agreement with Nilorn in relation to the supply of Goods and Services to the Customer and its supply chain members;

Framework Agreement: means the specific additional terms and conditions, which apply to the purchase of any Goods and Services for the ultimate use by the Customer, agreed between Nilorn and the Customer in a separate overarching agreement;

Goods: any goods or materials Nilorn agrees to supply under a Contract;

Intellectual Property Rights: all copyright and related rights, trade marks, trade names, domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, computer software or databases, rights to preserve confidentiality (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or 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 may now or in the future subsist in any part of the world;

Nilorn: Nilorn UK Limited, registered office Acre Park, Dalton Lane, Keighley, West Yorkshire, BD21 4JH (Company Number: 00434050) or any company or firm which is controlled by, or is under common control with, Nilorn UK Limited;

Order: a request, purchase order, production order or completion and submission of an Order Form to purchase goods and/or services and/or a call off order for Stock or a compulsory order submitted by the Buyer's Customer (in each case whether communicated in Writing, orally or otherwise) received by Nilorn or acceptance by the Buyer of a Quotation;

Order Acknowledgement: acknowledgement of acceptance of an Order by Nilorn, which will usually be provided in Writing but may be provided orally or by commencing performance of the Order;

Order Form: Nilorn's standard order form or ordering platform for the purchase of certain goods and/or services;

Price: the price for the Goods and/or Services stated in a Quotation and/or an Order Acknowledgement, as more particularly detailed in Condition 8;

Quotation: an estimate, proposal, quotation or design brief provided, as an invitation to treat, by Nilorn to the Buyer orally or in Writing;

Services: any services (including any consultation, preparation of design briefs, design and manufacture of Goods) Nilorn agrees to supply under a Contract;

Stock: Goods held by Nilorn for supply to the Buyer and/or the Customer pursuant to Condition 10; and

Writing: means any form of written communication including letter, email, facsimile transmission and other comparable means of communication.

1.2 References to the masculine include the feminine and the neuter, references to the singular include the plural and, in each case, vice versa. References to a statute or statutory provision is a reference to that statute or statutory provision as it is in force for the time being, and includes reference to any amendment, extension, application or re-enactment and includes any subordinate legislation made under it.

1.3 Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be deemed to be followed by the words "without limitation" and shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms and.

1.4 Any obligation in the Contract not to do something includes an obligation not to agree, allow, permit or acquiesce in that something being done.

1.5 Headings shall not affect the interpretation of the Conditions.

2. APPLICATION OF TERMS

2.1 The Conditions and any Additional Terms shall apply to all Contracts and, subject to any variation made in accordance with Condition 2.3, are the only terms and conditions on which Nilorn agrees to supply Goods and Services to the Buyer, to the exclusion of all other terms and conditions.

2.2 No terms and conditions of the Buyer or Customer endorsed upon, delivered with, referred to or stipulated or contained in the Order, or any specification, confirmation of delivery or any other similar document shall form part of the Contract. Any attempt by the Buyer to exclude, vary or limit any of the Conditions or Additional Terms other than in accordance with the Conditions shall be void and shall not form part of the Contract.

2.3 Any variation to the Conditions and any representations about the Goods or Services, except Additional Terms, shall have no effect and shall not form part of the Contract unless expressly agreed in Writing.

2.4 Nilorn may provide the Buyer with a Quotation. A Quotation so provided is an invitation to treat by Nilorn to sell the goods and/or services set out in the Quotation, subject to the Conditions, to the Buyer. Unless stated otherwise in the Quotation, a

Quotation is valid for 30 days from its date, provided that Nilorn has not previously withdrawn it. Nilorn may enter into agreements with a Customer under which the Customer and Nilorn may have agreed requirements for supply by Nilorn to the Customer's supply chain, of which the Buyer is a member ("Customer Agreement").

2.5 Where a Buyer is to purchase Goods and/or Services from Nilorn for supply to or for a particular Customer, it shall do so in accordance with any relevant terms of the Customer Agreement, including in respect of minimum order quantities, compulsory order delivery, price, payment and returns. The Buyer shall comply with such terms which shall be deemed to be Additional Terms under these Conditions, and shall accordingly for part of the Contract. Where required, by virtue of a Customer Agreement, to exclusively purchase Goods and Services from Nilorn of a particular type to meet supply of its products to Customers, the Buyer acknowledges and hereby undertakes not to purchase similar Goods or Services from any other source to satisfy Customer orders or supply throughout the term of any Customer Agreement unless prior consent from Nilorn is obtained in Writing.

2.6 Acceptance by the Buyer (whether written or oral) of a Quotation provided by Nilorn and/or the placing of an Order (including a compulsory order provided by a Customer as agent for the Buyer requiring purchase of goods and/or services from Nilorn), shall be deemed to be an offer, subject to the Conditions, to purchase the goods and services stated therein from Nilorn.

2.7 Nilorn shall not be obliged to accept or fulfil any Order and no Order shall be deemed to be accepted by Nilorn until Nilorn provides an Order Acknowledgement or, if earlier, Nilorn commences performance of the Services and/or delivers the Goods (whichever is the earlier).

2.8 No binding Contract will come into existence until an Order Acknowledgement is given by Nilorn, in accordance with Condition 2.7.

3. DESCRIPTION

3.1 The quantity, quality and description of, and any specification for, the Goods and/or Services are as set out in the Contract. Unless otherwise agreed in Writing, no Contract shall be a sale by sample.

3.2 All samples, descriptions, drawings, specifications, technical data, price lists, advertising, illustrations and any other materials issued by Nilorn, or contained in Nilorn's brochures, catalogues, website or other advertising materials, are approximations and for illustration purposes only, they should not be relied on by the Buyer as precise or construed literally and do not form part of the Contract unless Nilorn agrees otherwise 3.3 in Writing.

Nilorn reserves the right to alter its brochures, catalogues or website and any samples, descriptions, drawings, specifications, technical data, price lists, advertising, illustrations 3.4 and any other materials at any time without notice.

The Buyer acknowledges and accepts that, whilst the Company will endeavour to match all colours and finishes, Goods are supplied on the understanding that the finish of Goods containing natural products or materials (such as wood or leather) may vary from sample to sample and product to product, may not be uniform in colour or texture, or in the case of wood may contain grain variations, and in the case of wood or leather may include natural marks and scars, and that by reason of differences in equipment, inks, minor natural variations occurring in different batches of stock supplied by the Buyer, Customer or Nilorn (as the case may be) to produce the Goods, or in the materials supplied by Nilorn's suppliers for the same purpose, and any other reasonable varying conditions occurring between proofing and production and between different production runs, may result in a reasonable variation in colour and quality between the proofs and the Goods supplied, and between different batches of Goods supplied, and any such variations shall not be a defect for the purposes of Condition 6.1.

3.5 Nilorn's employees or agents are not authorised to make any representations concerning the Goods. Any advice or recommendation given by Nilorn, or its employees or agents, to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by Nilorn is followed or acted upon entirely at the Buyer's own risk and, accordingly, Nilorn shall not be liable for any such advice or recommendation which is not so confirmed. In entering into the Contract, the Buyer acknowledges that it has not relied and does not rely on, and waives any claim for breach of, any representations, advice or recommendation which are not confirmed in Writing.

3.6 The Buyer acknowledges and accepts that the Goods are not goods usually stocked by Nilorn; they are either goods that Nilorn has manufactured in accordance with the Buyer's specifications and/or incorporating Agreed Artwork, and/or goods ordered specifically for the Buyer under the Contract.

3.7 Nilorn reserves the right to make any amendments to the artwork submitted by the Buyer and/or Customer (if any) it reasonably considers necessary or appropriate to effectively carry out its obligations under the Contract. If Nilorn makes any amendments to the artwork then it shall communicate such amendments to the Buyer and/or Customer (as the case may be) in Writing and send a final proof. The Buyer and/or Customer (as the case may be) shall promptly confirm whether it accepts the final proof and, unless specified otherwise by Nilorn, within 48 hours from the date/time of Nilorn's communication at the latest.

3.8 Nilorn reserves the right to make any changes in the specification of the Goods it reasonably considers are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are supplied to Nilorn's specification, it considers necessary or desirable so long as they do not materially affect the quality or performance of the Goods.

4. DELIVERY

4.1 Unless otherwise agreed in Writing by Nilorn, delivery of the Services shall take place at the business premises of Nilorn and delivery of the Goods shall take place at the business premises of the Buyer or the delivery address set out in the Contract ("Delivery Point").

- 4.2 Nilorn will endeavour to deliver the Goods and/or to perform the Services to/at the Delivery Point by the date specified in the Contract or, if none is specified, within a reasonable period from the date of the Order Acknowledgement. However, any such specified date is an estimate only and it is expressly agreed that time for delivery of the Goods and Services under any Contract shall not be of the essence.
- 4.3 Nilorn may deliver the Goods in advance of the specified delivery date (if any) by giving reasonable notice to the Buyer.
- 4.4 Nilorn will endeavour to deliver the Goods as near as possible to the Delivery Point as a safe hard road permits but reserves the right to refuse to deliver the Goods at or to the Delivery Point if Nilorn's carrier reasonably considers the Delivery Point is unsuitable for delivery, in which case Nilorn or its carrier shall contact the Buyer to make suitable alternative arrangements for delivery.
- 4.5 Nilorn may deliver the Goods by separate instalments, which shall be invoiced and paid for separately and in accordance with the Contract. Each separate instalment shall, unless otherwise agreed in Writing, be deemed a separate Contract.
- 4.6 Subject to the other Conditions and unless agreed otherwise by Nilorn in Writing, Nilorn shall not be liable for any direct, indirect or consequential loss (all three of NILORN'S CONDITIONS OF SALE Page 2 of 4 which terms include, pure economic loss, loss of profits, loss of business, loss of data, depletion of goodwill and any similar loss) costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or the performance of the Services (even if caused by Nilorn's negligence) nor shall any such delay entitle the Buyer to repudiate or terminate the Contract unless such delay exceeds 30 days.
- 4.7 Unless agreed otherwise by Nilorn in Writing or by Nilorn's carrier at the time of delivery, the Buyer is responsible for promptly unloading the Goods from the carrier's delivery vehicle when it reaches the Delivery Point. Nilorn's record of the delivery date, quantity and description of the Goods delivered to the Buyer shall be conclusive evidence of such, unless the Buyer can provide conclusive contrary evidence.
- 4.8 The Buyer shall inspect Goods upon delivery, and must inform Nilorn of any discrepancy against Order Acknowledgement in accordance with the Conditions. All returns and/or replacements shall be addressed in accordance with the Conditions and Nilorn's Returns Policy as may be made available from time to time.
- 4.9 If the quantity of Goods delivered to the Buyer is up to 2% more or less than the quantity ordered the Buyer must promptly notify Nilorn, is not entitled to reject all or any of the Goods for this reason and shall, unless agreed otherwise in Writing, pay for any surplus or shall be issued with a credit note for any shortfall at the pro rata Contract rate.
- 4.10 Subject to Condition 4.9, if the quantity of Goods delivered is more than 2% less than the quantity ordered the Buyer must promptly notify Nilorn and shall not be entitled to reject the Goods supplied unless the Buyer has notified Nilorn of the purported failure to fulfil order quantities and Nilorn have confirmed that they accept there has been a failure to fulfil order and, further, fail to fulfil the order quantities within a further 14 days.
- 4.11 No claim for non-delivery of a (or part of a) consignment or for damage in transit will be considered by Nilorn unless a separate written notice is given to the carrier concerned and to Nilorn within 48 hours of receipt of the Goods by the Buyer and a complete claim in Writing is made to Nilorn within 5 days of receipt of the Goods by the Buyer. In the case of non-delivery of a whole consignment of the Goods, written notice must be given to the carrier concerned and to Nilorn within 48 hours of the proposed date of delivery and a complete claim in Writing is made to Nilorn within 20 days of the proposed date of delivery.
- 4.12 The Goods in respect of which a claim is made under Condition 4.11 regarding damage in transit shall be preserved in exactly the same state and condition as delivered for a period of 14 days from notification of the claim and within such time Nilorn, including its agents, and/or the carrier, shall have the right to attend the Buyer's premises or any other premises where the Goods are held to inspect the Goods and investigate the claim.
- 4.13 Nilorn's liability under Conditions 4.11 and 4.12, as a result of the Buyer complying with the notice and opportunity to inspect requirements, is limited to (at Nilorn's option) replacing the Goods or issuing a credit note for the Goods within a reasonable time.
- 4.14 Unless agreed otherwise by Nilorn in Writing, if delivery of the Goods is accepted by the Buyer and the Buyer fails to notify Nilorn of any issues in accordance with the Conditions, the Buyer shall not be entitled to reject the Goods and Nilorn shall have no liability for delivering the wrong Goods or for damage to the Goods and the Buyer shall be bound to pay the Price and any invoiced sums in respect of the Goods and/or Services as if the Goods had been delivered in accordance with the Contract.
- 4.15 No Goods delivered to the Buyer that are in accordance with the Contract will be accepted for return without the prior written approval of Nilorn on terms to be determined at the absolute discretion of Nilorn.
- 4.16 If Nilorn agrees to accept any Goods for return, the Buyer shall be liable to pay a handling charge of 10% of the invoiced amounts for the relevant Goods. Such Goods must be returned by the Buyer carriage paid to Nilorn in their original condition and packaging.
- 4.17 Goods returned without the prior written approval of Nilorn may at Nilorn's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any other rights or remedies Nilorn may have.
- 4.18 Any receipt or signed delivery note (or equivalent documentation) obtained by Nilorn or its carrier from the Buyer, or its employees or agents, accepting or taking delivery of the Goods shall be conclusive evidence of delivery of the Goods, or such part thereof as is indicated by the receipt/delivery note, in accordance with the Contract by Nilorn.
- 4.19 If for any reason the Buyer fails to accept delivery of any of the Goods when the Goods are delivered to the Buyer, or within 24 hours of notification that the Goods are ready for collection from Nilorn's premises or Nilorn is unable to deliver the Goods because the Buyer has not provided appropriate instructions, access, documents or authorisations:
- (a) the Goods will be deemed to have been delivered; and
 - (b) Nilorn may store the Goods until actual delivery or disposal in accordance with Condition 4.20, whereupon the Buyer shall be liable on demand for all related costs and expenses (including, transport, storage and insurance costs).
- 4.20 If the Buyer has not taken/accepted delivery of the Goods within 60 days of attempted delivery or notification that the Goods are ready for delivery/collection,
- Nilorn shall be entitled to dispose of the Goods, but the Buyer shall be liable to pay for any reasonable disposal costs (as well as the Price and all sums due under Condition 4.19(b)) on demand.
- 5. BUYER'S OBLIGATIONS AND WARRANTIES**
- 5.1 The Buyer shall pay the Price (including any delivery and insurance costs) and any other amounts due under the Contract and these Conditions in accordance with Condition 9.
- 5.2 The Buyer warrants that it has the necessary authority to enter into the Contract. The Buyer warrants that all the information provided to Nilorn, in particular that the terms of any Order (including any applicable specification), is true and accurate and acknowledges that Nilorn is relying upon such information to perform its obligations under the Contract.
- 5.3 The Buyer acknowledges that it is responsible for ascertaining the type, quantity and specification of the goods required for its purposes and that Nilorn provides no warranty (and none shall be implied) that the Goods are fit for any particular purpose.
- 5.4 The Buyer agrees to co-operate fully with Nilorn and provide any information and assistance required to supply the Goods and Services and, in particular agrees to do the following at its own expense:
- (a) comply with Nilorn's requirements and procedures for ordering and returns, including Nilorn's Auto Order Process and Returns Policy (as may be varied from time to time);
 - (b) carry out all reasonable instructions of Nilorn on all matters required to be undertaken in respect of the Goods and Services;
 - (c) provide Nilorn with access at all reasonable times as requested by Nilorn to its site or premises to allow Nilorn to supply and as it reasonably requires to inspect the Goods and Services and to ensure that no counterfeit or non-Nilorn Goods are being used where such is prohibited under a Customer Agreement;
 - (d) obtain and maintain all necessary permissions, licences, consents, authorisations, import/export clearances and any other documents to enable the Goods to be delivered to the Delivery Point and ensure prompt payment of any and all applicable import or export, duties, taxes, transport charges or any other amounts required to be paid to ensure the Goods are delivered to the Delivery Point in accordance with the Contract;
 - (e) provide Nilorn with any reasonably necessary information relating to the Goods within a sufficient time to enable Nilorn to fulfil the Contract and provide any and all other information, co-operation and assistance reasonably required to enable Nilorn to perform the Contract;
 - (f) Buyer or any final proof of the Goods provided by Nilorn on or before the date notified by Nilorn to the Buyer in Writing or in accordance with Condition 3.7;
 - (g) provide adequate and appropriate equipment and suitably trained and competent personnel at the Delivery Point to promptly collect or unload/load the Goods at a reasonable speed;
 - (h) inspect and check the Goods on delivery to ensure that they conform to the Contract and the Buyer's requirements;
 - (i) ensure an authorised representative of the Buyer signs the delivery note (or the equivalent documentation) on delivery to confirm that the Goods are as ordered and undamaged;
 - (j) take such steps as reasonably required to enable delivery of the Goods and ensure that all relevant laws and regulations, in particular in relation to health & safety are complied with to ensure safe delivery of the Goods and to ensure that Nilorn and its employees, agents and sub-contractors are always subject to a safe working environment; and
 - (k) comply with its notification obligations and all other obligations under the Contract.
- 5.5 If the Goods supplied under a Contract are to be used by the Buyer in conjunction with the products of the Buyer or any third party, the responsibility for ensuring that such products and the Goods are in all respects suitable and adequate for that purpose shall rest entirely with the Buyer. Nilorn shall not be liable to the Buyer or to any third party in respect of any damage or loss which may arise from the breach of this Condition 5.5 by the Buyer.
- 5.6 It is the responsibility of the Buyer to ensure that all designs, specifications, drawings and measurements (whether supplied by or on behalf of the Customer, the Buyer or Nilorn (as the case may be)) relating to the Goods and Services to be supplied under the Contract are accurate and sufficient to meet the requirements of the Buyer.
- 5.7 The Buyer shall promptly notify Nilorn if any of the events in Condition 7.5 occur.
- 5.8 The Buyer acknowledges that, unless otherwise indicated by Nilorn in accordance with Condition 3.7, artwork submitted by the Buyer through Nilorn's website or in Writing shall be deemed to be Agreed Artwork and Nilorn shall be entitled, subject to the remainder of these Conditions, to produce the Goods accordingly.
- 5.9 Unless Nilorn agrees otherwise in Writing, the Buyer acknowledges and accepts that, if it fails to notify Nilorn of its acceptance or rejection of any final proof in accordance with Condition 3.7, it shall be deemed to have accepted the amendments, the final proof shall be deemed to be Agreed Artwork and Nilorn shall be entitled, subject to the remainder of these Conditions, to produce the Goods accordingly.
- 5.10 The Buyer shall be liable, and the Customer (where applicable) shall be liable, to pay Nilorn, on written demand, for, and indemnify Nilorn against, all reasonable costs, expenses, charges and losses sustained or incurred by Nilorn (including any loss of profit, loss of reputation, damage to property, loss of opportunity to deploy resources elsewhere, legal costs on an indemnity basis) arising directly or indirectly from the Buyer's or Customer's fraud, negligence or failure to comply, or unreasonable delay in complying, with any of the Conditions or terms of the Contract or, in relation to the Customer, any failure to comply or unreasonable delay in complying with the Framework Agreement.
- 6. NILORN'S OBLIGATIONS AND WARRANTIES**
- 6.1 Subject to Conditions 6.2 to 6.8, Nilorn warrants that the Services shall be provided with reasonable skill and care, and that the Goods shall conform in all materials respects with their description and applicable specification under the Contract and shall be free from any defects in workmanship, construction or materials (but only to the extent that such are within the control of Nilorn) at the time of delivery and, unless otherwise agreed by Nilorn in Writing, Nilorn provides no other warranty in respect of the Goods or Services.
- 6.2 Where there is, or it is alleged that there is, any defect in workmanship, construction or materials in respect of the Goods which is outside the control of Nilorn, as reasonably decided by Nilorn, Nilorn will endeavour (but does not guarantee) to transfer the benefit of any warranty or guarantee for the Goods

- given to Nilorn by the relevant manufacturer of the stock or materials supplied to Nilorn to produce the Goods.
- 6.3 If a manufacturers' warranty applies to the Goods and Nilorn has agreed to assist the Buyer to make a claim under the warranty this will be subject to the Buyer's compliance with these Conditions, the terms of the manufacturers' warranty and any reasonable conditions/instructions imposed by Nilorn.
- 6.4 Subject to Conditions 6.5 to 6.8, if the relevant Goods do not conform with the warranty provided by Nilorn in accordance with Condition 6.1, or any other warranty provided by Nilorn in Writing in respect of the Goods, Nilorn shall, at its option, if the breach relates to the goods replace such Goods (or the defective part) and if the breach relates to the Services or the Services performed on such Goods re-perform the services to the standard required or issue a credit note at the pro rata Contract rate to the Buyer provided that the Buyer:
- NILORN'S CONDITIONS OF SALE**
- (a) gives written notice of any breach of the warranty to Nilorn within 10 days of the time when the Buyer discovers or, in the case of latent defects, when the Buyer ought to have discovered such; and
- (b) gives Nilorn a reasonable opportunity, after receiving the notice, to examine the relevant Goods and the Buyer (unless agreed otherwise and subject to a reasonable handling charge in the circumstances for collection by Nilorn) returns the relevant Goods (or the relevant part) to Nilorn's premises at the Buyer's expense.
- 6.5 Condition 6.4 shall not apply if the defect arises as a result of normal wear and tear, the Buyer's negligence or failure to comply with the Conditions or failure to follow Nilorn's or the manufacturers' oral or written instructions as to the storage, specification, use or maintenance of the Goods or (if there are none) good trade practice or the Buyer makes any further use of the Goods or alters, modifies, mishandles or repairs the Goods before or after giving notice to Nilorn in accordance with Condition 6.4.
- 6.6 If Nilorn complies with Condition 6.4, it shall have no further liability for a breach of the warranty in Condition 6.1 in respect of such Goods and/or Services. If delivery of the Goods and/or Services is not refused by the Buyer and the Buyer fails to notify Nilorn in accordance with Condition 6.4 (a) the Buyer shall not be entitled to reject the Goods and/or Services. Nilorn shall have no liability for such defect or breach of warranty and the Buyer shall be bound to pay the Price as if the Goods and/or Services had been delivered in accordance with the Contract.
- 6.7 Any Goods returned by the Buyer pursuant to Condition 6.4 shall belong to Nilorn and these Conditions shall apply to any replacement Goods supplied.
- 6.8 Nilorn's reasonable opinion as to the cause of the defect shall be final and binding unless the Buyer can provide conclusive evidence to the contrary.
- 7. RISK & TITLE**
- 7.1 The risk in the Goods shall pass to the Buyer when the Goods are delivered (but not unloaded), or are deemed to be delivered by virtue of Condition 4, to the Delivery Point.
- 7.2 Title in the Goods shall not pass to the Buyer until Nilorn has received (in cash or cleared funds) from the Buyer:
- (a) the full Price for the Goods plus VAT; and
- (b) all other sums that are due to Nilorn from the Buyer.
- 7.3 Until title in the Goods passes (as set out in Condition 7.2), the Buyer shall:
- (a) hold the Goods on a fiduciary basis as Nilorn's bailee;
- (b) store the Goods (at no cost to Nilorn) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Nilorn's property;
- (c) not remove, destroy, deface or obscure any identifying mark or packaging relating to the Goods;
- (d) maintain the Goods in satisfactory condition, keep them insured on Nilorn's behalf for their full Price against all risks from the date of delivery and provide Nilorn with a copy of the insurance policy on request;
- (e) notify Nilorn immediately if any of the events listed in Condition 7.5 occur; and
- (f) deliver up the Goods to Nilorn on demand.
- 7.4 The Buyer may only resell the Goods before title has passed if such sale is a sale of Nilorn's property on the Buyer's own behalf as principal, made in the Buyer's ordinary course of business and at the full market value.
- 7.5 The Buyer's right to possess the Goods shall end immediately if it:
- (a) has a bankruptcy order made against it or makes an arrangement or composition with its 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 or manager or 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 Buyer or notice of intention to appoint an administrator is given by the Buyer 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 Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, or the Buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (b) the Buyer suspends, ceases or threatens to cease to carry on all or substantially the whole of its business or the Buyer suffers or allows any execution, sequestration or such other process to be levied on its property or obtained against it or encumbers or in any way charges any of the Goods; or
- (c) the Buyer fails to observe or perform any of its obligations under the Contract; or
- (d) any event occurs or proceeding is taken, with respect to the Buyer, in any jurisdiction to which it is subject that has a similar or equivalent effect to any of the events listed in Condition 7.5(a) and (b).
- 7.6 Nilorn shall be entitled to recover payment for the Goods notwithstanding the fact that title in any of the Goods has not passed from Nilorn to the Buyer.
- 7.7 The Buyer grants Nilorn, its agents and employees an irrevocable licence at any time to access (which shall include vehicular access) any premises owned, occupied or controlled by the Buyer where the Goods are or may be stored to inspect the Goods or (where the Buyer's right to possession has ended in accordance with Condition 7) recover them.
- 7.8 If before title to the Goods passes to the Buyer any of the events listed in Condition 7.5 occur or Nilorn reasonably believes any such event is about to occur and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy of Nilorn, Nilorn may at any time require the Buyer to deliver up the Goods or use its rights in Condition 7.7 the Price (plus VAT) shall become immediately due and payable (not with standing any previous agreement or arrangement to the contrary) to Nilorn and Nilorn shall be entitled to cancel the Contract or suspend further deliveries under the Contract without any liability to the Buyer.
- 7.9 If Nilorn repossesses any Goods or the Buyer delivers up any Goods, in accordance with Condition 7, the Contract for those Goods shall be rescinded.
- 8. PRICE**
- 8.1 Unless otherwise agreed by Nilorn in Writing and subject to Conditions 8.2 and 8.3, the price for the Goods shall be the price stated in the Quotation or Order Acknowledgement provided by Nilorn to the Buyer in accordance with Conditions 2.4 to 2.7 together with any applicable delivery and/or insurance costs ("Price"). The Price does not include value added tax (VAT) or any applicable import or export duties, or other duties or taxes, which shall be payable by the Buyer to Nilorn at the prevailing rate at the date of the invoice and in the manner prescribed by law.
- 8.2 The Price is based on the cost of materials, labour, sub-contracts, transport, taxes, exchange rates, currency regulations, duties, insurance and all other relevant costs at the date of the Quotation and/or Order Acknowledgement.
- 8.3 Nilorn reserves the right to vary the Price, by giving notice to the Buyer prior to delivery, to take account of any variation (howsoever arising) in these costs, the imposition of any new taxes or duties or any changes to the Agreed Artwork between the Quotation or Order Acknowledgement date and the delivery date.
- 8.4 In addition to the Price, the Buyer shall pay for:
- (a) any increase in costs due to changes to the delivery date or address or to the quantity or specification of Goods (including the artwork to be incorporated in the Goods) required by the Buyer; and
- (b) any additional work or costs as a result of the Buyer providing inadequate or inaccurate instructions or information to Nilorn or as a result of the Buyer failing to comply with any of the Conditions or any Additional Terms.
- 8.5 Any additional costs payable by the Buyer under Condition 8.4 will (at Nilorn's option) be invoiced by Nilorn at the time the work is carried out or as part of the Price in accordance with Condition 9.
- 9. PAYMENT**
- 9.1 Unless otherwise agreed in Writing by Nilorn, Nilorn shall be entitled to issue an invoice at any time prior to, on, or at any time after, actual or deemed delivery. Payment shall be made by the Buyer on or before the due date, notwithstanding the fact that delivery may not have taken place and/or title in the Goods may not have passed to the Buyer. Receipts for payment shall only be issued if requested in Writing by the Buyer.
- 9.2 Unless otherwise agreed in Writing, for Account Buyers each invoice submitted by Nilorn shall be paid within 30 days. For Buyers without an Account invoices shall be paid at the time of the Order or on receipt of Nilorn's invoice, as directed by Nilorn. Time for payment shall be of the essence.
- 9.3 Nilorn reserves the right, in its absolute discretion, to cancel the Account.
- 9.4 Nilorn reserves the right to suspend the Account if it decides, for whatever reason, that it requires security from the Buyer, other than that already provided (if any), for the performance and discharge of the Buyer's obligations under any Contract or for any other reason it considers reasonable. The Buyer agrees to use its best endeavours to ensure that any security required by Nilorn (including, but not limited to, a third party providing a guarantee) is provided. Nilorn may decide to reinstate the Account if the Buyer provides the security required or meets any other conditions required to be satisfied by Nilorn.
- 9.5 If Nilorn exercises its right to cancel or suspend the Account, in accordance with Conditions 9.3 and 9.4 respectively, all sums owed to Nilorn by the Buyer at the date of cancellation or suspension shall be payable on demand and Nilorn may continue trading with the Buyer on the basis set out in Condition 9.2 for Buyers without an Account.
- 9.6 No payment shall be deemed to be received until Nilorn has received cash or cleared funds and all sums payable to Nilorn under a Contract shall become due on demand on its termination, howsoever arising. All payments shall be made to Nilorn as indicated on the Order Acknowledgement and/or invoice (the latter of which shall prevail) issued by Nilorn.
- 9.7 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counter claim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Nilorn to the Buyer. Nilorn shall be entitled to set-off any payments due to the Buyer and/or Customer from Nilorn against any outstanding amounts due and payable to Nilorn (including in relation to invoices for Goods and/or Services and/or Stock) from the Buyer and/or Customer.
- 9.8 Without prejudice to any of its other remedies, if any amount due from the Buyer is not paid in accordance with the Contract Nilorn may do all or any of the following:
- (a) treat any or all Contracts as repudiated by the Buyer;
- (b) without notice suspend or cancel delivery of the Goods under the Contract, and any other Contract, until the Buyer pays the outstanding amount(s) in full;
- (c) appropriate any payment made by the Buyer under any other Contract with Nilorn to pay for any outstanding amounts as Nilorn may, in its sole discretion, think fit;
- (d) charge interest at the annual rate of 8% above the base rate of Bank of England (a part of a month being treated as a full month for the purpose of calculating interest);
- (e) claim interest under Late Payment of Commercial Debts (Interest) Act 1998;
- (f) invoice the Buyer for any and all costs incurred by Nilorn recovering monies owed (including legal costs on an indemnity basis).
- 9.9 On termination of the Contract, howsoever caused, the rights of Nilorn in this Condition 9 shall remain in effect.
- 10. STOCKHOLDING**
- 10.1 If the Buyer or a Customer requests that certain Goods are manufactured and/or held in stock ("Stock"), then Nilorn will have no obligation to manufacture or hold Stock unless specifically agreed in Writing with the Buyer or Customer.
- 10.2 Nilorn will provide details to the Buyer and/or Customer of all Stock (requested to be held by the Buyer under a Contract or deemed allocated to hold for the Buyer under a Customer Agreement) held not less than twice a year, and shall be entitled to invoice the Buyer and/or Customer (as the case may be) for all Stock held 60 days after providing details of Stock held, in which case Nilorn shall provide the

Buyer and/or Customer with the opportunity to have the Stock delivered within a further 60 days (at the Buyer's cost). If the Buyer and/or Customer does not accept delivery within that time period, Nilorn shall be entitled to destroy, or otherwise dispose of, the Stock without further liability to the Buyer and/or Customer. The Buyer and/or Customer shall remain liable for payment of all invoiced Stock.

11. CANCELLATION

11.1 Unless agreed otherwise in Writing by Nilorn, the Buyer is not entitled to cancel the Contract. Unless agreed otherwise by Nilorn in Writing, if the Buyer cancels a Contract (with or without Nilorn's consent/agreement), the Buyer shall be liable to pay the Price in full (less any applicable delivery and/or insurance costs/charges that are no longer applicable) to Nilorn in accordance with its invoice.

11.2 Any amounts payable by the Buyer under Condition 11.1 shall be invoiced by Nilorn within 60 days of the cancellation date and shall be payable by the Buyer in accordance with Condition 9.

12. TERMINATION

12.1 On termination of the Contract for any reason:

- (a) the Buyer shall immediately pay to Nilorn all of Nilorn's outstanding unpaid invoices and interest and, in respect of Services supplied and/or Goods manufactured but not yet supplied, and for which no invoice has been submitted, Nilorn may submit an invoice payable immediately on receipt;
- (b) the Buyer shall, immediately upon request, return all of Nilorn's property. If the Buyer fails to do so, then Nilorn may enter the premises of the Buyer and take possession of Nilorn's property in accordance with Condition 7.7. Until Nilorn's property has been returned the Buyer shall be solely responsible for its safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

12.2 On termination of the Contract (howsoever arising) Conditions, 6.1, 9, 10.1, 12.2, 13, 14.1, and 16 shall survive and continue in full force and effect.

13. LIMITATION OF LIABILITY

13.1 Subject to Conditions 3.4, 4, 6 and 13.4, Condition 13 sets out the entire financial liability of Nilorn (including any liability for the acts or omissions of its employees, agents, and sub-contractors) to the Buyer in respect of any breach of the Contract and any representation, statement, tortious act or omission, including negligence, arising under or in connection with the Contract and in respect of any use made (including any alterations or modifications) or resale by the Buyer of any of the Goods, or any product incorporating the Goods.

13.2 Subject to Conditions 13.3 and 13.4:

- (a) Nilorn shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill, loss of data or loss of business opportunity (in each case whether direct, indirect or consequential) or any claims for special, indirect or consequential loss, damages or compensation whatsoever (howsoever caused) which arise under, out of or in connection with the Contract;
- (b) Nilorn's total liability in contract, tort (including breach of statutory duty or negligence), misrepresentation, restitution or otherwise arising out of or in connection with the performance or contemplated performance of the Contract shall be limited to the Price or £50,000 (whichever is the greater).

13.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

13.4 Nothing in the Conditions excludes or limits Nilorn's liability for death or personal injury caused by Nilorn's negligence or for fraud or fraudulent misrepresentation or for any matter which it would be illegal for Nilorn to exclude or attempt to exclude its liability for.

13.5 These Conditions are intended to govern business-to-business contracts. Nothing in these Conditions is intended to, nor shall they, affect any consumer's statutory rights.

14. FORCE MAJEURE

14.1 Nilorn reserves the right to defer the date of delivery of the Goods or cancel the Contract (in each case without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, labour disputes (other than in relation to Nilorn's own workforce), or restraints or delays affecting Nilorn's or carriers, or inability or delay in obtaining supplies of adequate quality, provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in Writing to Nilorn to terminate the Contract.

15. CONFIDENTIALITY

15.1 The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by Nilorn, its employees, agents, consultants or subcontractors and any other confidential information concerning Nilorn's business or products which the Buyer may obtain. The Buyer shall not use any such information for any purpose other than to perform its obligations under the Contract.

15.2 The Buyer may disclose such information:

- (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the obligations of the Buyer under the Contract; and
- (b) as may be required or permitted by law, court order or any governmental or regulatory authority.

15.3 The Buyer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this Condition 14.1.

16. GENERAL

16.1 Nilorn may, in its absolute discretion, reject any artwork submitted by the Buyer and/or cancel the Contract altogether if it reasonably considers the artwork to be unsuitable or inappropriate, likely to damage its reputation and/or goodwill, or requires the consent from a third party to be used. If Nilorn considers that appropriate amendments can be made to the artwork to proceed with the Contract then it shall propose such amendments in accordance with Condition 3.7 and the remainder of that Condition shall apply. If Nilorn considers that proof of a third party's consent or other authority is required to proceed with the Contract then the Buyer shall, in accordance with Condition 5.4(d), promptly obtain such and send it to Nilorn. If the Buyer fails to provide such proof or authority within 14 days, or such other timeframe set out in Writing by Nilorn, Nilorn shall be entitled to terminate the Contract by notice and to issue an invoice to the Buyer for an amount it considers

reasonable in the circumstances to reflect the work undertaken up to the date of termination.

16.2 If there are any differences between the information within the Quotation and the Order Acknowledgement in respect of any Contract the latter shall prevail.

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

16.4 All Intellectual Property Rights in any documents or materials provided by one party to the other party under the Contract shall belong to the originating party. Metal, film, electronic files and images and other materials owned by Nilorn and used by Nilorn to produce the Goods shall remain the exclusive property of Nilorn and the Intellectual Property Rights in the final version of the Goods shall become the exclusive property of Nilorn unless agreed otherwise in Writing. Nilorn grants the Buyer a non-exclusive royalty free licence of its Intellectual Property Rights in the Goods for the sole purpose of the use of the Goods by the Buyer for the normal use for this type of product. If the Buyer wants to use the Goods for any other purpose then it should contact Nilorn for its consent in Writing to do so. The Buyer grants Nilorn a non-exclusive royalty free licence of its Intellectual Property Rights for the sole purpose of performing its obligations under the Contract.

16.5 The Buyer warrants that it owns or otherwise has the right to use and/or licence the use of the Intellectual Property Rights in any materials provided by the Buyer and/or Customer to Nilorn to provide the Goods.

16.6 The Buyer's property and all property supplied to Nilorn by or on behalf of the Buyer shall, whilst in the possession of Nilorn or in transit to or from the Buyer, be deemed to be at the Buyer's risk unless otherwise agreed in Writing and the Buyer must insure accordingly.

16.7 Nilorn may assign all or any of its obligations under the Contract to any person, firm, company or organisation. The Buyer shall not be entitled to assign any of its obligations under the Agreement without obtaining Nilorn's consent in Writing.

16.8 If any Condition is found by any court to be wholly or partly illegal, invalid, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, unenforceability or unreasonableness be deemed severable and the remaining Conditions, and the remainder of such Condition, shall continue in full force and effect. In the event that such court decides that such Condition is not severable, the parties agree to substitute such Condition with a legal, valid, enforceable and reasonable Condition that achieves, to the greatest extent possible, the same commercial effect as the original Condition.

16.9 Failure or delay by Nilorn to enforce, or partially enforce, any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by Nilorn of any breach of, or any default under, any provision of the Contract by the Buyer shall be in Writing, shall not be deemed to be a waiver of any subsequent breach or default, and shall in no way affect the other provisions of the Contract.

16.10 The Contract at the date of manufacture (if applicable, and if not then the date of despatch from Nilorn's premises) contains the entire agreement between the parties and supercedes any previous agreements, arrangements, undertakings or Quotations (whether made orally or in Writing).

16.11 All notices sent by the Buyer to Nilorn must be sent to Nilorn at its registered office address or as otherwise agreed by Nilorn. Nilorn may send notices to the Buyer at the email or postal address, or by facsimile to the number, provided by the Buyer to Nilorn.

16.12 If a dispute arises between the parties, without prejudice to any rights, either party may have (including, but not limited to, the right to obtain injunctive relief), the Parties will, within 7 days, attempt to settle matters by negotiation, failing which the issue shall be escalated to the parties' Managing Director who will attempt to resolve such dispute within a further 7 days.

16.13 All communications between the parties about the Contract, including any notices to be sent or received under the Contract, must be in Writing. Notices shall be deemed served on delivery if delivered by hand, 48 hours after posting if sent by post, and on completion of transmission if sent by email or facsimile.

16.14 The formation, construction, performance, validity and all aspects of the Contract shall be governed by the law of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.

16.15 The parties agree that the Contract and any dispute or claim arising out of or in connection with it or its subject matter or its formation, existence, construction, performance, validity and all other aspects of the Contract (including non-contractual disputes or claims) shall be as far as legally possible governed by and construed in accordance with the laws of England and Wales.

16.16 The parties agree that Conditions 16.14 and 16.16 shall be applied without regard to the principles of conflict of laws and without regard to the CISG UN Convention.

16.17 Where the Buyer is based within the EU, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute, claim or difference arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims) and shall be subject to English law (in line with Condition 16.14).

16.18 Where the Buyer is not based within the EU the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or difference that relates to non-payment of any sum due to Nilorn from the Buyer and the parties irrevocably agree that any other dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination or the legal relationships established by the Contract, the ability to enforce any judgment obtained and any non-contractual disputes or claims, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this Condition 16.17. It is agreed that:

- (a) the arbitration tribunal shall consist of 1 arbitrator;
- (b) the seat of the arbitration shall be London;
- (c) the language of the arbitration shall be English; and
- (d) the governing law shall be English law in accordance with Condition 16.14.