



## European Golf Machinery Limited – Terms and Conditions of Sale

The Customer's attention is particularly drawn to the provisions of clause 12 (Limitation of liability).

### 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

**"Business Day"** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**"Business Hours"** the period from 08.30 am to 16.30 pm on any Business Day.

**"Commencement Date"** has the meaning given in clause 2.1.1.

**"Conditions"** these terms and conditions as amended from time to time in accordance with clause 15.15.

**"Contract"** the contract between the Supplier and the Customer for the supply of Goods in accordance with these Conditions.

**"Customer"** the person or firm who purchases the Goods from the Supplier.

**"Customer Default"** has the meaning given in clause 8.2.

**"Deliverables"** the deliverables produced by the Supplier for the Customer.

**"Delivery Location"** has the meaning given in clause 4.1 or clause 4.2, as the case may be.

**"Force Majeure Event"** any circumstances not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation

imposing a lockdown or restriction on movement, an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts;
- (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party affected by the Force Majeure Event); and
- (i) interruption or failure of utility service.

**"Goods"** the goods (or any part of them) set out in the Order.

**"Goods Specification"** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier and contained in the Supplier's quotation to which the Order refers.

**"Intellectual Property Rights"** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, 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.

**"Losses"** all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses).

**"Order"** the Customer's order for the supply of Goods or Services or Goods and Services, as set out in the Customer's purchase order form, as ordered by the Customer in person or by telephone, or the written acceptance of the Supplier's quotation (as the case may be).

**"Services"** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

**"Service Specification"** the description or specification for the Services provided in writing by the Supplier to the Customer.

**"Supplier"** European Golf Machinery Limited registered in England and Wales with company number 02912185 whose registered office is at The Oaks, Snipe Farm Road, Clopton, Woodbridge, Suffolk, IP13 6SL.

**"Supplier Materials"** has the meaning given in clause 8.1.6.

Interpretation:

A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

A reference to writing/written includes both fax and email.

## 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase the Goods or Services or Goods and Services in accordance with these Conditions. The Customer shall set out in the Order:

2.1.1 the Customer's contact details, including address, telephone number and email address;

2.1.2 a description of the goods or services required; and

2.1.3 in respect of Services, the make, model and age of the machine(s) or equipment to which the Services shall relate.

2.2 Following receipt of the Order, the Supplier shall provide to the Customer, either orally, by email or by post, an estimate of the price for the Goods and Services.

2.3 The Order shall only be deemed to be accepted when:

2.3.1 the Customer confirms their agreement of the price estimate provided by the Supplier in accordance with clause 2.2; and

2.3.2 the Supplier confirms acceptance of the Order at which point and on which date

the Contract shall come into existence (Commencement Date).

2.4 The Customer acknowledges and agrees that if it wishes to cancel an Order (or part of it) following the Supplier's acceptance of the Order in accordance with clause 2.1.1 then it may still remain liable for up to 100% of the Contract price.

2.5 By placing an Order the Customer shall be deemed to have:

2.5.1 confirmed to the Supplier that any plans and/or drawings which it has provided to the Supplier for the purpose of the Contract, including to enable to the Supplier to issue its quotation, are accurate and correct; and

2.5.2 approved any drawings and plans issued by the Supplier with the relevant quotation, which shall form part of the Contract. The production of drawings and plans by the Supplier shall imply no warranty by the Supplier as to their accuracy, completeness or suitability, which shall be assessed by the Customer prior to placing the Order;

2.6 Subject to clause 2.4 above, any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations contained on the Supplier's website or in its 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 nor have any contractual force.

2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.8 Any quotation given by the Supplier shall not constitute an offer, and unless otherwise specified by the Supplier shall be valid only for the period specified in the quotation.

2.9 Any typographical or other error or omission contained in the Supplier's quotation (and annexed drawings, plans or descriptive matters) provided to the Customer by the Supplier may be corrected without any liability to the Supplier.

2.10 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

## 3. GOODS

3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all Losses suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

instructions (including without limitation the details of any access, weight, loading hours restrictions at the Delivery Location) or any other instructions that are relevant to the supply of the Goods.

3.3 The Supplier reserves the right to amend the Goods Specification (including the price for the Goods) if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

**4. DELIVERY AND INSTALLATION OF GOODS**

4.1 Subject to clause 4.2, the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**).

4.7 If the Customer fails to take or accept delivery of the Goods within 7 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by the Supplier's failure to perform its obligations under the Contract in respect of the Goods:

4.2 If agreed by the Supplier, the Customer may collect the Goods from the Supplier's premises at The Oaks, Snipe Farm Road, Clopton, Woodbridge, Suffolk, IP13 6SL or such other location as may be agreed by the Supplier before delivery (in the event the Customer collects the Goods pursuant to this clause 4.2, such location hereafter being the **Delivery Location**).

4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

4.7.2 the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses in respect of storage of the Goods (including insurance).

4.3 Unless agree in writing by the Supplier, the Customer shall be responsible for unloading the Goods upon delivery at the Delivery Location. Delivery of the Goods shall be completed when the Supplier has made the Goods available for unloading by the Customer which may include unloading using mechanical lifting equipment by the Customer (or in the event the Customer collects the Goods pursuant to clause 4.2, when the Goods are available for loading at the Delivery Location).

4.8 If five Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

4.4 The Customer shall be responsible for any costs it may incur in unloading the Goods pursuant to clause 4.3, including without limitation the cost for the hire of mechanical lifting equipment.

4.9 Where the Customer has engaged the Supplier to install the Goods it:

4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay or failure in delivery of the Goods (including delays to the installation of the Goods to be undertaken by the Supplier) that is caused by:

4.9.1 warrants to the Supplier that the site at which the Goods are to be installed is suitable for such installation including having suitable foundations and a level base;

- 4.5.1 a Force Majeure Event;
  - 4.5.2 a failure by the Customer to provide access to the Delivery Location; or
  - 4.5.3 the Customer's failure to provide the Supplier with adequate delivery
- 4.9.2 shall ensure that it provides all necessary facilities to enable the Supplier to complete such installation including without limitation:
- (a) clear access to the site in accordance with clause 8.1.3;
  - (b) adequate lighting and a 240 volt 50Hz mains power supply and any other utilities or materials in accordance with clause 8.1.4.

## 5. QUALITY OF GOODS

- 5.1 The Supplier warrants, and shall ensure, that the Goods shall, in respect of newly-issued Goods, for not more than 12 months from the date of delivery of the Goods or, in respect of Goods that are already used, for not more than 3 months from the date of delivery of the Goods (the “**Warranty Period**”):
- 5.1.1 conform in all material respects with the Goods Specification;
- 5.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 5.1.3 be fit for any purpose held out by the Supplier.
- 5.2 In order make a claim against any of the warranties in clause 5.1, the Customer must:
- 5.2.1 give notice in writing to the Supplier during the Warranty Period as soon as possible following discovery of the circumstances giving rise to the claim setting out in reasonable detail the basis of the claim and how the Goods do not conform with the relevant warranty;
- 5.2.2 give the Supplier a reasonable opportunity to examine the Goods in question; and
- 5.2.3 (if asked to do so by the Supplier) return the Goods in question to the Supplier's place of business at the Customer's cost.
- 5.3 Notwithstanding the provisions of clause 12, the Supplier's liability in respect of any breaches of clause 5.1 is limited to the repair or replacement of the Goods in question, at the Supplier's absolute discretion.
- 5.4 The warranty in clause 5.1 shall not apply if:
- 5.4.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2.1;
- 5.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 5.4.3 the defect arises as a result of the Supplier following any drawing, design, measurement or Goods Specification supplied by the Customer;
- 5.4.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 5.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- 5.4.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or
- 5.4.7 the Customer is otherwise in breach of the Contract.
- 5.5 Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the Guarantees.
- 5.6 Subject to clause 5.7, if:
- 5.6.1 the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the provisions of clause 5.1; and
- 5.6.2 the Supplier is given a reasonable opportunity of examining such Goods;
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.7 The Supplier shall not be liable for any defects in the Goods if:
- 5.7.1 the Customer fails to notify the Supplier of a defect that would be apparent from a visual inspection of the Goods upon delivery within 3 Business Days of delivery;
- 5.7.2 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- 5.7.3 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 5.7.4 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- 5.7.5 the Customer alters or repairs such Goods without the written consent of the Supplier;

5.7.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

5.7.7 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.8 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the provisions of clause 5.1.

5.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **6. TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery or at the point of collection pursuant to clause 4.2.

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 ensure that the Goods remain readily identifiable as the Supplier's property;

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4; and

6.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to:

(a) the Goods; and

(b) the ongoing financial position of the Customer.

6.4 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession that have not been irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or

of any third party where the Goods are stored in order to recover them.

## **7. SUPPLY OF SERVICES**

7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## **8. CUSTOMER'S OBLIGATIONS**

8.1 The Customer shall:

8.1.1 ensure that the terms of the Order and any information it provides in either or both the Service Specification and the Goods Specification are complete and accurate;

8.1.2 co-operate with the Supplier in all matters relating to the supply of the Services;

8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Goods or Services or Goods and Services, including without limitation;

(a) a satisfactory and continuous means of accessing the Customer's premises for the purposes of delivering the Goods and providing the Services; and

(b) parking facilities for the Supplier's (and its agents' and employees') vehicles;

8.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Goods and provide the Services, and ensure that such information is complete and accurate in all material respects including without limitation;

- (a) the details of any access, weight or loading hours restrictions at the Delivery Location;
  - (b) necessary utilities such as water, light, heating and power;
  - (c) access to welfare facilities including first aid;
- 8.1.5 comply with all applicable laws, including health and safety laws, including as regards facilities for the Supplier's employees while they are engaged in delivering the Goods or providing the Services at the Customer's premises;
- 8.1.6 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk and not dispose of or use the Supplier Materials without the Supplier's authorisation; and
- 8.1.7 comply with any additional obligations as set out in either or both the Service Specification and the Goods Specification.
- 8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of its obligations until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- 8.2.3 the Customer shall reimburse the Supplier on written demand for any Losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 9. CHARGES AND PAYMENT**
- 9.1 The price for Goods and Services:
- 9.1.1 shall be the price set out in the Order; and
- 9.1.2 in respect of Goods, shall be exclusive of all costs and charges of packaging, insurance and transport of the Goods.
- 9.2 Notwithstanding clause 9.1.1, the prices quoted by the Supplier in respect of Goods or Services shall be estimates only. For the avoidance of doubt, the Supplier reserves the right to invoice the Customer for an amount greater than the price set out in the Order.
- 9.3 The Supplier reserves the right to require the Customer:
- 9.3.1 to pay a deposit in advance of the Supplier providing the Goods or Services; or
- 9.3.2 to make an advance payment of the price for the Goods or Services,
- and the amount of any such deposit or advanced payment shall be deducted from any remaining balance of the price payable by the Customer.
- 9.4 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost to the Supplier that is due to:
- 9.4.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, increases in inflation and increases in labour, materials and other manufacturing costs);
- 9.4.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification n;
- 9.4.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 9.5 In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery of the Goods. In respect of the Services, the Supplier may invoice on completion of the Services.
- 9.6 The Customer shall pay each invoice submitted by the Supplier:
- 9.6.1 within 30 days of the date of the invoice (except where a different payment term has been specified in the Supplier's quotation and/or acceptance of an Order); and

9.6.2 in full and in cleared funds to a bank account nominated by the Supplier, and

time for payment shall be of the essence of the Contract.

9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.

9.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 13, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.8 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

9.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 10. INTELLECTUAL PROPERTY

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

10.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.

10.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## 11. CONFIDENTIALITY

11.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years

after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.

11.2 Each party may disclose the other party's confidential information:

11.2.1 to its employees, officers, representatives, contractors or subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 10; and

11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

12.1 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

12.2.1 death or personal injury caused by negligence;

12.2.2 fraud or fraudulent misrepresentation;

12.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

12.2.4 defective products under the Consumer Protection Act 1987.

12.3 Subject to clause 12.2:

12.3.1 in respect of Goods, the Supplier's total liability to the Customer shall not exceed the price of the Goods;

- 12.3.2 in respect of Services, the Supplier's total liability to the Customer shall not exceed the price of the Services; and
- 12.3.3 the Supplier shall not be liable to the Customer for any loss or damage suffered by the Customer as a result of the Customer's failure to follow any instructions of the Supplier or of any other manufacturer of the Goods (or any part thereof).
- 12.4 This clause 12.4 sets out specific heads of excluded loss which are wholly excluded:
- 12.4.1 loss of profits;
- 12.4.2 loss of sales or business;
- 12.4.3 loss of agreements or contracts;
- 12.4.4 loss of anticipated savings;
- 12.4.5 loss of use or corruption of software, data or information;
- 12.4.6 loss of or damage to goodwill; and
- 12.4.7 indirect or consequential loss.
- 12.5 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.6 This clause 12 shall survive termination of the Contract.
- 13. TERMINATION**
- 13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 13.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 10 Business Days after receipt of notice to do so;
- 13.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 13.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 13.1.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 13.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 13.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 14. CONSEQUENCES OF TERMINATION**
- 14.1 On termination of the Contract:
- 14.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 14.1.2 the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and
- 14.1.3 where the Contract is terminated by the Customer, the Customer shall indemnify the Supplier for all reasonable costs and expenses and any direct or indirect loss that the Supplier incurs up to the date of Termination or arising out of Termination.
- 14.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and

liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

- 14.3 Any provision of the Contract that expressly or impliedly is intended to have effect after termination shall continue in full force and effect.

## 15. GENERAL

### Force majeure

- 15.1 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly.

### Assignment and other dealings

- 15.2 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 15.3 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

### Notices

- 15.4 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 15.4.1 delivered by hand or by pre-paid signed for post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 15.4.2 sent by email to the following addresses (or an address substituted in writing by the party to be served):
- Supplier:** info@rangeball.co.uk.
- Customer:** if applicable, the email address from which the Order is sent.
- 15.5 Any notice shall be deemed to have been received:
- 15.5.1 if delivered by hand, at the time the notice is left at the proper address;
- 15.5.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00

am on the second Business Day after posting; or

- 15.5.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

- 15.6 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### Severance

- 15.7 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 15.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

### Waiver

- 15.8 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 15.9 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

### No partnership or agency

- 15.10 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

### Entire agreement

- 15.11 The Contract constitutes the entire agreement between the parties.
- 15.12 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

### Third party rights

15.13 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

15.14 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

#### **Variation**

15.15 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

#### **Governing law**

15.16 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

#### **Jurisdiction**

15.17 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.