

Na Niu Limited (company no 10268526) whose registered office is at 42 The Cooper Building, 36 Wharf Road, N1 7GR, London, UK ("we" or "us") and VAT no is 248450203

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS [AND SERVICES]

Your attention is particularly drawn to the exclusions and limitations of liability at Condition 9.

1. DEFINITIONS AND INTERPRETATION

In these Conditions:

- 1.1. the following words and expressions have the following meanings and, in addition, any words and expressions defined in any Condition will have the same meaning when used in any other Condition:

"Business Day" a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales

"Charges" **EITHER**
the charges for the Services set out in our price list in force on the date on which the Order is received by us

OR

the charges for the Services set out in our price list in force on the date on which the Order Acknowledgement is issued by us

OR

the charges for the Services set out in our quotation

[as those charges may be varied from time to time in accordance with **Condition 6.4**]

“Liability”	liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability under an indemnity contained in the Contract and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party’s obligations under the Contract and/or any defect in any of the Goods, in each case howsoever caused including if caused by negligence [or if caused by a deliberate breach by that party]
“Order”	your order for the supply of goods by us, set out in our Sales Invoice/your acceptance of our quotation
“Order Acknowledgement”	our written acceptance of the Order [set out in your Sales Invoice]
“Prices”	<p>EITHER</p> <p>the prices for the Goods set out in our price list in force on the date on which the Order is issued by you/received by us</p> <p>OR</p> <p>the prices for the Goods set out in our price list in force on the date on which the Order Acknowledgement is issued by us</p> <p>OR</p> <p>the prices for the Goods set out in our price list in force on the date of Delivery</p> <p>OR</p> <p>the prices for the Goods set out in our quotation</p> <p>[as those prices may be varied from time to time in accordance with Condition 6.4]</p>

“Property Liability”

OPTION 1

Liability arising from or for loss or destruction of or damage to tangible property [(excluding data)]

OPTION 2

Liability for loss or destruction of or damage to tangible property [(excluding data)], but no Liability arising from any such loss, destruction or damage]

“Specification”

the written technical specification for the Good: set out in the stock list available on request from www.naniultd.com

“you”

the person named as the customer in the Order

- 1.2. all headings are for ease of reference only and will not affect the construction or interpretation of these Conditions;
- 1.3. references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.4. references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time; [and]
- 1.5. any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them; [and]
- 1.6. [the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word “other” or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;] [and]
- 1.7. [any reference to:

1.7.1. time of day is to London time;

1.7.2. a day is to a period of 24 hours running from midnight to midnight;] [and

1.8. [an obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party].

2. **CONTRACT FORMATION**

2.1. [Any quotation given by us will be valid for a period of 7 days from and including its date and will constitute an invitation to treat and not an offer.]

2.2. The Order constitutes an offer by you to purchase the goods set out in the Order ("**Goods**") from us on these Conditions. A contract for the supply of Goods by us to you on these Conditions will be formed when we accept the Order by issuing an Order Acknowledgement to you. For the avoidance of doubt, we are under no obligation to accept the Order.

2.3. These Conditions are the only terms and conditions on which we will supply goods to you and will apply to the exclusion of all other terms and conditions including any terms and conditions which you purport to apply under any purchase order, confirmation of order or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.

2.4. [Delivery [or commencement of the performance of the Services] will be deemed conclusive evidence of your acceptance of these Conditions.]

2.5. [We will be entitled, at our discretion, to deliver Goods by separate instalments. We will be entitled to invoice the Price for each instalment separately in accordance with **Condition 6.5**. Each instalment will be deemed to be a separate contract and no cancellation or termination of any one contract relating to an instalment will give you the right to cancel or terminate any other contract.]

3. **THE GOODS**

3.1. [We will be entitled at any time to:

3.1.1. vary the design, finish or colour/sizing/dimensions of Goods [and/or their packaging]; and/or

3.1.2. substitute any materials or parts which are used in Goods and which are unavailable for

any reason with alternative materials or parts

to the extent that:

- 3.1.3. this does not materially affect their quality or performance; or
- 3.1.4. this is necessary to comply with any health and safety or other legal requirements.

[We will use reasonable endeavours to give you prior/not less than 5 days written notice of any such variation or substitution.]

3.2. [With the exception of the Specification, all samples, drawings, descriptive and illustrative matter and advertising issued or published by us [(or the manufacturer of the Goods)] whether in catalogues, brochures, websites, other promotional material or otherwise are for the sole purpose of giving an approximate idea of the relevant Good.

3.3. The Contract is not a sale by sample.

4. **DELIVERY ([OPTION 3 IS THE ONLY OPTION WE OFFER/AVAILABLE TO YOU])**

4.1. **OPTION 1 (Collection by Customer)**

You will collect the Goods from our premises at Kings House 174 Hammersmith House, London, UK and will load them onto the collecting vehicle during the hours of 9:00 am to 5:00 pm and within a period of 5 Business Days from [and including] the day on which we inform you that the Goods are available for collection. Delivery of the Goods ("**Delivery**") will be deemed to occur at the time of collection (prior to loading) or, if earlier, on expiry of the period for collection specified in this **Condition 4.1**.

OPTION 2 (Delivery by Supplier to a UK address. This option may be used where the Supplier is delivering to the Customer's premises or where the Supplier is delivering to a carrier appointed by the Customer.)

We will deliver the Goods to the address specified in the Sales Invoice and you will be responsible for off-loading the Goods from the delivery vehicle. We will inform you at least 5 days in advance of the date on which the Goods will be delivered. Delivery of the Goods ("**Delivery**") will be deemed to occur when they arrive at the delivery address/they have been off-loaded at the delivery address.

OPTION 3 (Incoterms - International supplies where neither option 1 nor option 2 applies)

The Goods will be Delivered at Place (DAP). Delivery of the Goods ("**Delivery**") will be deemed to occur when we complete our delivery obligations under that Incoterm. To the extent only of any conflict or inconsistency between Delivery at Place (DAP) (as such term is defined in Incoterms 2010) and these Conditions, Incoterms 2010 will take precedence.

4.2. We will use reasonable endeavours to deliver Goods on the estimated delivery date set out in the DHL tracking system [(tracking number found in "Waybill" section of DHL Shipping Label provided to you after issuing a Sales Invoice)], but time for delivery of the Goods will not be of the essence of the Contract. Any delivery dates given by us are estimates only [save for the dates which we inform you of under **Condition 4.1**].

4.3. If:

4.3.1. the Goods have not been delivered under **Condition 4.1** within 5 days but excluding the estimated delivery date set out in the Sales Invoice; and

4.3.2. we fail to make those Goods available for collection under **Condition 4.1** within 5 days of a written notice referring to this **Condition 4.3** and setting out your rights under it being given by you,

you will be entitled to cancel the Contract by giving written notice to that effect to us. If you exercise your right of cancellation, we will refund to you any monies which you have already paid to us under the Contract and you will not be required to pay any further monies to us under the Contract. Subject to **Condition 9.5**, our sole Liability for our failure to deliver the Goods will be limited to the price (exclusive of value added tax) paid by you in obtaining replacement goods of equivalent description and quality in the cheapest market available, less the Price of the Goods.

4.4. Save as provided in **Condition 4.3**, you will not be entitled to cancel the Contract or to reject any Goods by reason of a delay in delivery or failure to deliver.

4.5. If Delivery occurs but you fail to accept delivery of the Goods we will be entitled to:

- 4.5.1. store or arrange for storage of the Goods until you accept delivery of them or they are disposed of under **Condition 4.5.2** (as applicable) [and to take such action as we consider necessary to attempt to re-deliver the Goods to the address specified in the Sales Invoice;
- 4.5.2. [following written notice to you,] treat the Contract as repudiated by you and dispose of the Goods in any way we see fit, including by sale to another person. If we sell any of the Goods under this **Condition 4.5.2** at a price which is less than the relevant Price [plus any relevant [packaging,] [insurance,] [carriage] [and] [delivery] costs], we will be entitled to charge you for the shortfall; and
- 4.5.3. charge you for all costs and expenses which we incur under **Conditions 4.5.1** and **4.5.2**.

5. **PASSING OF RISK AND RETENTION OF TITLE**

- 5.1. Risk of damage to or loss of the Goods will pass to you on Delivery.
- 5.2. Legal and beneficial ownership of the Goods will not pass to you until we have received in full in cleared funds:
 - 5.2.1. all sums due to us in respect of the Goods; and
 - 5.2.2. all other sums which are or which become due to us from you on any account whatsoever.
- 5.3. Until ownership of the Goods has passed to you, you will:
 - 5.3.1. hold the Goods on a fiduciary basis as our bailee;

- 5.3.2. store the Goods (at no cost to us) separately from all other goods in such a way that they remain readily identifiable as our property;
- 5.3.3. [not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;]
- 5.3.4. [not, without our prior written consent, annex any Goods to your premises;]
- 5.3.5. maintain the Goods in satisfactory condition; and
- 5.3.6. [keep the Goods insured for their full price against damage or loss on an "all risks" basis with insurers approved by us, (acting reasonably), [ensure that our interest in them is noted on the relevant insurance policy and that we are named as loss payee in respect of the Goods], whenever requested by us produce a copy of the policy of insurance in respect of the Goods to us, do nothing and not omit to do anything which in consequence permits any insurer to refuse to indemnify you in full in accordance with the terms of any insurance policy maintained in respect of the Goods in respect of any claim made under any such insurance policy and

EITHER

ensure that any insurance proceeds received by you under the relevant policy are applied to repairing damaged Goods or, in the event that they are not so applied, hold such proceeds on trust for us.

OR

procure that any insurance proceeds received in respect of lost or damaged Goods are paid to us, to the extent required to satisfy your indebtedness to us.]

5.4. You may use and resell the Goods in the ordinary course of your business before ownership has passed to you, provided that you will be permitted to make sales solely on the following conditions:

5.4.1. any sale will be effected at full market value;

5.4.2. any sale will be a sale of your property on your own behalf and you will deal as principal when making such a sale;

5.4.3. [you will hold such part of the proceeds of sale as represents the amount owed by you to us in trust for us and will account to us accordingly;] and

5.4.4. [you will include a retention of title clause in the form of this **Condition 5** in your sale contract with your customer].

5.5. Your right to possession, use and resale of the Goods will terminate immediately if, before ownership of the Goods passes to you in accordance with **Condition 5.2:**

5.5.1. you have a receiver, administrator or provisional liquidator appointed; are subject to a notice of intention to appoint an administrator; pass a resolution for your winding-up [(save for the purpose of a solvent restructuring [previously approved in writing by us])]; have a winding up order made by a court in respect of you; enter into any composition or arrangement with creditors [(other than relating to a

- solvent restructuring
[previously approved in writing
by us]); [or] cease to carry on
business[; or have any steps or
actions taken in connection with
any of these procedures];
- 5.5.2. [we give you written notice that
we have any [reasonable]
concerns regarding your
financial standing;]
- 5.5.3. [you [fail to pay any sum due
to us [under the Contract] on or
before the due date]/[are in
breach of any of your
obligations under the Contract
[or any other contract between
us and you]]];]
- 5.5.4. [you encumber or in any way
charge any of the Goods;] [or]
- 5.5.5. [the Contract [expires or]
terminates for any reason].
- 5.6. We will be entitled to recover payment for the Goods (including by way of an action for the price) notwithstanding that ownership of any of the Goods has not passed from us.
- 5.7. You grant, and will procure that the owner of any relevant third party premises grants, us, our agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where your right to possession, use and resale has terminated, to recover them.
- 5.8. [Where we are unable to determine whether any goods are the Goods in respect of which your right to possession, use and resale has terminated, we will be deemed to have sold all goods of the kind sold by us to you in the order in which they were invoiced to you.]
- 5.9. If your right to possession, use and resale of the Goods terminates in accordance with **Condition 5.5**, we will be entitled to issue you with a credit note for all or any part of the price of the Goods together with value added tax thereon.
- 5.10. Our rights contained in this **Condition 5** will survive expiry or termination of the Contract however arising.

6. PRICE AND PAYMENT

- 6.1. You will pay the Prices [and Charges] to us in accordance with this **Condition 6**.
- 6.2. The Prices [and Charges] are exclusive of [packaging,] [insurance,] [carriage] [and] [delivery] costs [and those [reasonable] [travel, accommodation and subsistence] expenses [reasonably and properly] incurred by us from time to time in performing the Services ("**Expenses**") which will be payable by you in addition to the Prices [and Charges].
- 6.3. Any sum payable under the Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time.
- 6.4. [We will be entitled to vary the Prices [and/or Charges] at any time by giving written notice to you to reflect any variation in the cost of supplying the Goods [and/or Services] which arises as a consequence of [any change in law]/[any variation in your requirements for the Goods [and/or Services]]/[any information provided by you being inaccurate or incomplete][or][any failure or delay by you in providing information].]
- 6.5. We will [be entitled to] invoice you for the Prices for the Goods and any [packaging,] [insurance,] [carriage] [and] [delivery] costs payable by you in addition to the Prices [and the Charges [and any Expenses payable by you in addition to the Charges]] following [us issuing the Order Acknowledgement]/ [Delivery].
- 6.6. [We will [be entitled to] invoice you for the Charges for the Services [and any Expenses payable by you in addition to the Charges] following [commencement of] performance of the Services].]
- 6.7. Each invoice will be payable by you within 7 days/Business Days following the date on which the invoice is issued/by the end of the month [following the month] in which the invoice is issued. All payments will be made in pounds sterling in cleared funds.
- 6.8. [Notwithstanding any purported contrary appropriation by you, we will be entitled, by giving written notice to you, to appropriate any payment by you to any invoice issued by us.]
- 6.9. If any sum payable under the Contract is not paid on or before the due date for payment we will be entitled to charge you interest on that sum at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis [and be compounded [Quarterly]].

- 6.10. [If you fail to make any payment due to us under the Contract [or any other contract between you and us] [on or before]/[within 7 days after] the due date we will be entitled to withhold further deliveries of Goods [and to suspend provision of the Services] until [payment of all overdue sums]/[that payment] has been made.]
- 6.11. [If you fail to make any payment due to us under the Contract on or before the due date [or if we have any [reasonable] concerns regarding your financial standing] we will be entitled, by giving written notice to that effect to you, to issue invoices prior to Goods being delivered and we will not be required to deliver the Goods until the relevant invoice has been paid in full.]]
- 6.12. If you fail to make any payment due to us under the Contract on or before the due date or if any of the events or circumstances set out in **Condition[s] 5.5.1** [or **5.5.2**] occur all invoices issued will immediately become due and payable.
- 6.13. Save as otherwise expressly provided in these Conditions or required by law, all payments to be made by you to us under the Contract will be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.
- 6.14. Following [expiry or] termination of the Contract:
- 6.14.1. we will be entitled to invoice all Prices [and Charges] and any [packaging,] [insurance,] [carriage] [and] [delivery] costs [and Expenses] incurred which have not yet been invoiced; and
 - 6.14.2. all invoices (including any invoices issued under **Condition 6.14.1**) will become immediately due and payable by you.

7. WARRANTY

- 7.1. We warrant to you that during the period starting on Delivery and ending on [the earlier of the time at which the relevant Good is incorporated into another product or used in a manufacturing process or] expiry of a period of 3 months from and including the date of Delivery (the "**Warranty Period**") the Goods will:
- 7.1.1. [[subject to **Condition 3.1,**] conform to the Specification [in all material respects];] [and]

- 7.1.2. [be free from material defects in design, materials or workmanship.]
- 7.2. If, at any time during the Warranty Period, you become aware of a breach of [either of] the warrant[y]/[ies] at **Condition 7.1**, you will:
 - 7.2.1. give written notice of the breach to us, such notice to be given [within 1 day after you become aware of the breach and] prior to expiry of the Warranty Period;
 - 7.2.2. at our option either return to us [(at your cost)] the relevant Good or permit us or our agent or sub-contractor to inspect it at your premises; and
 - 7.2.3. provide us with all information and assistance which we may [reasonably] require to investigate the alleged breach.
- 7.3. Subject to **Condition 9.5**, our only Liability for breach of [either of] the warrant[y]/[ies] at **Condition 7.1** will be, at our option, to repair or replace the relevant Good [or to reduce the Price of the relevant Good by a sum which is equitable in the circumstances].
- 7.4. Your only remedy for breach of the obligation at **Condition 7.3** will be in damages.
- 7.5. Subject to **Condition 9.5**, we will not have any Liability for a breach of [a]/[the] warranty at **Condition 7.1** if [or to the extent that]:
 - 7.5.1. you do not comply with your obligations at **Condition 7.2** in respect of the breach;
 - 7.5.2. the relevant defect was caused by damage in transit after Delivery;
 - 7.5.3. [the relevant defect was caused by fair wear and tear;]

- 7.5.4. [the relevant defect was drawn to your attention before formation of the Contract or the Good was examined by you before formation of the Contract and the examination ought to have revealed the defect;]
- 7.5.5. the relevant defect was caused or exacerbated by improper use, handling, alteration, installation, repair, maintenance, storage or failure to comply with instructions provided by us [or the manufacturer]; or
- 7.5.6. you make further use of the relevant Good after discovering the relevant breach.

The warrant[y]/[ies] under **Condition 7.1** will apply to any Goods which are repaired or replaced under **Condition 7.3** for the remainder of the original Warranty Period.

- 7.6. Subject to **Condition 9.5**, all warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are excluded from the Contract.

8. [SERVICES

- 8.1. We warrant to you that we will provide the Services with reasonable care and skill.
- 8.2. We will use reasonable endeavours to provide the Services on the estimated performance date set out in the Sales Invoice, but time for provision of the Services will not be of the essence of the Contract. Any performance dates given by us are estimates only.]

9. EXCLUSIONS AND LIMITATIONS OF LIABILITY

Your attention is particularly drawn to this Condition.

- 9.1. Subject to **Condition 9.5**, our entire Liability for any non-delivery of Goods or failure to deliver the Goods in accordance with the timescales set out or referred to in the Contract will be as set out in **Condition 4.3** and we will have no other Liability for any such non-delivery or failure to deliver. [For the avoidance of

doubt such Liability will be subject to **Condition 9.2** and will be taken into account in calculating whether the financial limit[s] in **Condition 9.2** [has]/ [have] been reached.]

9.2. EITHER (One total aggregate cap,)

Subject to Subject to **Condition 9.5**, our maximum aggregate Liability will be limited to £8,000.

OR (One cap for Property Liability and one cap for all other Liability)

9.2.1. Subject to Subject to **Condition 9.5**, our maximum aggregate Property Liability will be limited to £8,000.

9.2.2. Subject to Subject to **Condition 9.5**, our maximum aggregate Liability, but excluding any Property Liability, will be limited to £8,000.

9.3. We will have no Liability to you for any:

9.3.1. loss of profit (whether direct, indirect or consequential);

9.3.2. loss of revenue, loss of production or loss of business (in each case whether direct, indirect or consequential);

9.3.3. loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct, indirect or consequential);

9.3.4. loss of anticipated savings or loss of margin (in each case whether direct, indirect or consequential);

9.3.5. liability that you have to third parties (whether direct, indirect or consequential); or

- 9.3.6. indirect, consequential or special loss,

subject always to **Condition 9.5.**

- 9.4. We will not be in breach of the Contract or otherwise liable to you for any failure to perform or delay in performing our obligations under the Contract to the extent that such failure or delay is due to any event or circumstance beyond our reasonable control.
- 9.5. Nothing in the Contract will operate to exclude or restrict one party's Liability (if any) to the other:
 - 9.5.1. for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977);
 - 9.5.2. for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
 - 9.5.3. for breach of its obligations arising under section 12 Sale of Goods Act 1979;
 - 9.5.4. [for breach of its obligations arising under Section 2 Supply of Goods and Services Act 1982;]
 - 9.5.5. [for breach of its obligations arising under Section 8 Supply of Goods (Implied Terms) Act 1973;]
 - 9.5.6. arising under Section 2(3) Consumer Protection Act 1987; [or]
 - 9.5.7. [for a deliberate breach of the Contract by that party; [or]]

- 9.5.8. [for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.]
- 9.6. Any of our Liability which falls within **Condition 9.5** will not be taken into account in assessing whether [any of] the financial limit[s] in **Condition 9.2** has been reached.
- 9.7. Nothing in this **Condition 9** will prevent or restrict the right of a party to seek injunctive relief or specific performance or other discretionary remedies of the court.
- 9.8. [Each of our employees, agents and sub-contractors will be entitled to enforce all the terms of this **Condition 9** subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of the Contract. Accordingly and for the avoidance of doubt the financial limits on liability set out in **Condition 9** are the maximum liability of us, our employees, agents and sub-contractors in aggregate. The parties may vary or rescind the Contract without the consent of our employees, agents or sub-contractors.]

10. [YOUR OBLIGATIONS]

- 10.1. You will:
 - 10.1.1. [provide us with all such information and assistance as we may [reasonably] require from time to time to perform our obligations under the Contract];
 - 10.1.2. not [re-package the Goods or] remove or alter any trade marks, [patent numbers,] [serial numbers] or other identifying marks on the Goods or their packaging [or add any other trade marks, [patent numbers,] [serial numbers] or other identifying marks to the Goods or their packaging];
 - 10.1.3. [not alter or modify the Goods in any way;]
 - 10.1.4. [obtain such licences, permits, consents and authorisations as

may be required for any context concerning personal use, resale, export, distribution, manufacturing and design research/study, customization, media dissemination and any other activities involving the use of the goods purchased and owned by you that may be subject to legislation/regulations]; and

10.1.5. [[return packaging to]/[make packaging available for collection by] us, as required by us].

10.2. You will comply with our instructions in connection with any product recall initiated by us involving the Goods (or any of them).

10.3. Notwithstanding any other term of the Contract we will not be in breach of the Contract to the extent our failure to perform or delay or defect in performance of its obligations under the Contract arises as a result of:

10.3.1. any breach by you of your obligations contained in the Contract [provided that we use our reasonable endeavours to perform our obligations notwithstanding the breach by you];

10.3.2. us relying on any incomplete or inaccurate data provided by a third party; or

10.3.3. us complying with any instruction or request by you or one of your employees.]

11. **TERMINATION**

11.1. If you commit a [material] breach of the Contract we may terminate the Contract immediately by giving/by giving not less than 5 days' written notice to that effect to you. [This **Condition 11.1** will not apply to any failure by you to make any payment due to us under the Contract on or before the due date. **Condition 11.2** will apply instead to any such failure.]

- 11.2. [We may terminate the Contract immediately by giving/by giving not less than 5 days' written notice to that effect to you if you fail to make any payment due to us under the Contract [on or before]/[within 7 days the due date.]]
- 11.3. We may terminate the Contract immediately by giving written notice to that effect to you if any of the events or circumstances set out in **Condition 5.5.1** occur. You will notify us immediately upon the occurrence of any such event or circumstance.
- 11.4. If an event or circumstance which gives rise to relief from liability under **Condition 9.4** continues for a period of more than 3 months, either party will be entitled to terminate the Contract [immediately by giving]/[by giving not less than [5] days'] written notice to that effect to the other party.
- 11.5. Following expiry or termination of the Contract:
- 11.5.1. any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force; and
 - 11.5.2. all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
- 11.6. [Within 3 days after the date of expiry or termination of the Contract each party will, subject to the exception set out in **Condition 11.7**,
- 11.6.1. return to the other party all Confidential Information (including all copies and extracts) of the other party in its possession or control; and
 - 11.6.2. cease to use the Confidential Information of the other party.
- 11.7. Each party may retain any Confidential Information of the other party which it has to keep to comply with any applicable law [or which it is required to retain for insurance, accounting or taxation purposes]. **Condition 12** will continue to apply to retained Confidential Information [and Records].]

12. [CONFIDENTIALITY]

12.1. **Confidential Information** means any information (whether written, oral, in electronic form or in any other media) that:

12.1.1. is disclosed by or on behalf of a party (the "**Discloser**") to the other party (the "**Recipient**") in connection with the Contract and that relates (in whole or in part) to the Discloser or its business[; and/or

12.1.2. relates to the [existence or] terms of the Contract,]

but excluding any information that falls within the exclusions set out in **Condition 12.4.**

12.2. The Recipient will:

12.2.1. keep the Confidential Information secret, safe and secure and will only disclose it in the manner and to the extent expressly permitted by the Contract; and

12.2.2. use the Confidential Information only to the extent necessary for the performance of its obligations under the Contract.

12.3. The Recipient may disclose Confidential Information:

12.3.1. to such of its officers and employees and, in our case, agents and sub-contractors, who need access to that Confidential Information for the purpose of complying with its obligations under the Contract;

12.3.2. to the extent necessary in order to be able to refer a dispute for resolution in accordance with **Condition 15.2**; and

12.3.3. to the extent required by applicable law or a court of competent jurisdiction or the rules of any listing authority, stock exchange, the Panel on Takeovers and Mergers or a regulatory authority.

12.4. The Recipient's obligations under this **Condition 12** will not extend to Confidential Information which the Recipient can prove:

12.4.1. has ceased to be secret without default on the Recipient's part;

12.4.2. was already in the Recipient's possession prior to disclosure by or on behalf of the Discloser;

12.4.3. has been received from a third party who did not acquire it in confidence and who is free to make it available to the Recipient without limitation;

12.4.4. [was independently developed by the Recipient without any breach of the Contract;] or

12.4.5. at the time of disclosure was in the public domain or subsequently enters into the public domain without default of the Recipient.

12.5. [The Recipient acknowledges and agrees that damages alone would not be an adequate remedy for breach of this **Condition 12** by the Recipient. Accordingly, the Discloser will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of this **Condition 12** by the Recipient.]]

13. NOTICE

13.1. [Subject to **Condition 13.4,**] [A][a]ny notice or other communication given under or in connection with the Contract will be in writing[, in the English language] and:

13.1.1. sent by pre-paid [first class post]/[recorded delivery]/

- [airmail post] to the relevant party's address;
- 13.1.2. delivered to or left at (but not, in either case, by post) the relevant party's address[; or
- 13.1.3. [sent by text message to the relevant party's [Whatsapp/ Wechat number] or e-mail address]

[and, in the case of any notice or other communication to be given to us, marked for the attention of our specified representative]. Our address[, mobile telephone number] [and representative] are set out below and your address [and mobile telephone number] are those detailed in [the Sales Invoice], and may be changed by the relevant party giving at least [7 Business Days] notice in accordance with this **Condition 13**.

[42 The Cooper Building, 36 Wharf Road, London, N1 7GR]

[0044 7749105536]

For the attention of: [Na Niu, Director]

13.2. Any notice or communication given in accordance with **Condition 13.1** will be deemed to have been served:

- 13.2.1. if given as set out in **Condition 13.1.1**, at 9.00 a.m. on the 7th Business Day after the date of posting;
- 13.2.2. if given as set out in **Condition 13.1.2**, at the time the notice or communication is delivered to or left at that party's address[; and] [and]
- 13.2.3. [if given as set out in **Condition 13.1.3**, at the time of confirmation of delivery/ acknowledgement/message read notification on Whatsapp, Wechat or e-mail;]

[provided that if a notice or communication is deemed to be served [before [9.00am] on a Business Day it will be deemed to be served at [9.00am] on that

Business Day and if it is deemed to be served] on a day which is not a Business Day or after [5.00pm] on a Business Day it will be deemed to be served at [9.00am] on the immediately following Business Day].

- 13.3. To prove service of a notice or communication it will be sufficient to prove that the provisions of **Condition 13.1** were complied with.
- 13.4. [This **Condition 13** will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.]

14. GENERAL

14.1. The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

14.1.1. neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person) which is not expressly set out in the Contract;

14.1.2. [the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into the Contract and which is expressly set out in the Contract will be for breach of contract]; and

14.1.3. nothing in this **Condition 14.1** will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

14.2. A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will

only be valid [if it is in writing [and signed by the party giving it] and only] in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

- 14.3. If any term of the Contract (including any exclusion from, or limitation of, liability set out in **Condition 9**) is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.
- 14.4. No variation to the Contract will be effective unless it is in writing and signed by a [duly authorised representative]/[director] on behalf of each of the parties.
- 14.5. Nothing in the Contract and no action taken by the parties in connection with it or them will create a partnership or joint venture [or relationship of employer and employee] between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.
- 14.6. Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.
- 14.7. [Save as provided in **Condition 9.8,**] the parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.
- 14.8. Our rights and remedies set out in these Conditions are in addition to and not exclusive of any rights and remedies provided by law.
- 14.9. You will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of your rights under the Contract.[You will be entitled to sub-contract your obligation to collect Goods under **Condition 4.1,** but] you will not be entitled to sub-contract any of your [other] obligations under the Contract.

15. **GOVERNING LAW AND JURISDICTION**

- 15.1. The Contract [and any non-contractual obligations arising out of or in connection with it] will be governed by the law of England and Wales.
- 15.2. [Subject to **Condition 15.3,**] each party agrees that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract [(including in relation to any non-contractual obligations)].
- 15.3. [Either party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction].

