

Bearmach Limited
Terms & Conditions of Sale
(Business Customers & Consumers Combined)

These Terms & Conditions of Sale ("these Terms & Conditions") govern Your relationship with Bearmach Limited and apply to Business Customers and Consumers (as defined below). Please read them carefully as they affect Your rights and liabilities under the law. If You do not agree to these terms, please do not place an Order for Goods with Us

1. Who "We" are, who "You" are and other definitions used in these Terms & Conditions of Sale.

In these Terms & Conditions:

"We, Our or Us" means Bearmach Limited a private limited company registered in England and Wales with the registered office at Bearmach House Unit 8 Pantglas Industrial Estate Bedwas Caerphilly CF83 8GE South Wales United Kingdom, company registration number 00603417;

"You or Your" means the person, firm, or company purchasing the Goods; if You are doing so in the course of Your business or profession and the Goods are not for Your private use, You are a "Business Customer" and if You are buying the Goods for Your own personal use and not as part of a business, You are a "Consumer". **For Consumers, specific Terms & Conditions apply and these are identified in bold type below.**

'Contract' means any contract between You and Us for the sale and purchase of the Goods, incorporating these Terms & Conditions.

"Force Majeur" means causes beyond Our reasonable control such as (but without prejudice to the generality of the foregoing): Act of God, explosion, flood, tempest, fire or accident; war, threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; sudden increases in exchange rates or the purchase price of Goods; strikes, lock-outs or other industrial actions or trade disputes (whether involving Our employees or of a third party); difficulty in obtaining materials, labour or machinery; and power failure or breakdown in machinery.

"The Goods" means any Goods or other items, which shall be the subject of a Contract between You and Us for their sale and purchase incorporating these Terms & Conditions of Sale;

"Invoice" means the bill or account You receive from Us for the Goods

'Normal Working Hours' means 9am to 5pm on a Working Day

"The Price" means the price included in Our Invoice to You or (in respect of Business Charge Cards) the amount required by Us from You for the Order;

"Order" means the order form in relation to the Goods to be purchased by You either set out in Your purchase order or by e-mail, fax or on the telephone. Each Order shall be construed as an offer to purchase those Goods by You in accordance with and upon these Terms & Conditions;

"Quotation" shall mean a quotation from Us in relation to specific Goods. Prices included in quotations, Our Price lists, e-mails, faxes, telephone calls, order acknowledgements or imputed verbally are indicative only and are subject to change by Us at any time. The Price You pay will be as set out in the Invoice sent to You by Us in respect of the relevant Order, or (in respect of Business Charge Cards) the amount required by Us for the Order.

'Working Day' means Monday to Friday, excluding Bank or other Public holidays.

2. Acceptance of Orders and creation of Contracts

2.1 These Terms & Conditions shall apply to all Goods provided to You by Us. When You place an Order for Goods You make an offer to purchase the Goods described in Your Order ("Offer").

2.2 Once We have confirmed availability of the Goods, verified Your credit or debit card or payment details as necessary and prepared the Goods for dispatch, We may send You an Order acknowledgement or confirmation on receipt of Your Order but any such communication by Us is not to be treated as an acceptance by Us of Your Order.

2.3 Our acceptance of Your Offer shall occur when We dispatch the Goods and raise an Invoice for the Goods. Your Offer may not be accepted by Us. No Contract is created or becomes binding on Us unless and until We accept Your Offer and raise the relevant Invoice.

2.4 If You order by a Business Charge Card then Our acceptance will occur when We process the transaction to accept the funds for the Order from the Business Charge Card; in this instance, a tangible Invoice may not be created for the Order by Us. Invoices may be sent electronically including by PDF attachment.

2.5 If You have standard terms and conditions of purchase or supply then they are not applicable to any Contract with Us and We will not accept the inclusion of any alternative terms

by You which conflict with, alter or add to these Terms & Conditions. No variation to these Terms & Conditions are binding on Us unless it is expressly included in Our Invoice or is specifically accepted in writing by one of Our Directors or Our Company Secretary.

2.6 We will keep copies of all Contracts for a reasonable time. These may be available from Us on request, on payment of reasonable administration, copying charges and postage.

2.7 We reserve the right to obtain validation of Your credit or debit card payment details before providing You with any Goods.

2.8 If We cannot supply the Goods ordered by You, We reserve the right to offer You alternative Goods of equal or superior quality. Any such changes will be detailed in the Invoice. In such cases, if You do not wish to accept the alternative Goods offered, You may cancel the Order and require the refund of any money paid to Us in respect of that Order, including carriage charges. This shall be Your sole remedy in such circumstances.

2.9 All descriptions, drawings and particulars of weights, dimensions and performance issued by Us are approximate only. We will make every effort to supply the Goods as advertised but reserve the right to supply the Goods subject to minor variations in actual dimensions and specifications where these are changed by the manufacturer. **Save in the case where You are a Consumer**, any such minor variation will not give You the right to cancel or rescind any Order or Contract made with Us. Images of Goods are provided for illustrative purposes only and the actual Goods You receive may differ from the image displayed in Our catalogue or on Our website, especially with generic products.

2.10 When You place an Order, You are undertaking to Us that:

- (a) all details You provide to Us for the purpose of purchasing Goods are correct, and
- (b) the credit or debit card You use to make a purchase from Us is Your own card, that You are authorised to use it, and that there are sufficient funds or credit facilities to cover the cost of any Goods You order from Us.

2.11 In the case of Business Customers, We reserve the right to refuse to pay commission to Our affiliated partners for Orders that have not been placed directly with a Business Customer's account manager. If You require clarification regarding any entitlement to commission, You should contact Your own account manager.

2.12 We do not accept cancellation of orders by Business Customers once an Order Confirmation has been sent as many Orders are dispatched on the same day as the Order is placed. We cannot accept cancellation of an Order for bespoke Goods which have been produced to Your specific requirements.

2.13 Goods are not tested or sold as being fit for any particular application or for use under specific conditions, unless expressly agreed in writing. You are under a duty to ensure that the Goods Ordered from Us will suit Your requirements and that they are compatible with other products or components with which they are to be used.

2.14 Where You contract to purchase further Goods from Us (whether or not of the same description as Goods previously purchased) You shall be deemed to do so with express notice of these Terms & Conditions which shall be deemed to be incorporated into all such contracts unless You have received express notice that these Terms & Conditions have been superseded or revised by Us.

2.15 Where applicable a surcharge will be charged to Your Order and only refunded to You upon the return to Us of what We (in our absolute and unfettered discretion) deem to be a serviceable core part. You will be solely liable for the transport, insurance, shipping and any other costs of re-delivery to Us of such materials (even where We agree to collect them from You) and You agree that such costs may be deducted by Us from the surcharge before being refunded to You.

3. Data Protection

3.1 All data, information and documentation relating to You may be used by Us and Our suppliers as described in Our privacy policy (available to view on Our web site at www.bearmach.com) and You consent to its use by either Us or Our suppliers.

3.2 Data is maintained under the provisions of the Data Protection Act (1998), Our registration number is Z862656X. We may contact You from time to time to verify and update the data We hold on Your records.

3.3 We may share Your information with any member of Our group, which means Our ultimate holding company and its subsidiaries, as defined in section 736 of the UK Companies Act 1985 (as amended).

3.4 We may share Your information with selected third parties outside Our group, in order that they may contact You to let You know about Goods or services which may be of interest to You. Please contact Us if You wish to opt out of receiving such information.

3.5 You agree that We may use personal information provided by You in order to conduct appropriate anti fraud checks. Personal information that You provide may be disclosed to a credit reference or fraud prevention agency, which may keep a record of that information.

3.6 Please note that We may record and monitor inbound and outbound calls and electronic traffic for training purposes.

3.7 You may be required to provide to Us details of users of Goods. You must supply these details on request and We reserve the right to audit Your records and usage to ensure compliance with all Your obligations under a Contract.

3.8 If We set up an account for You then it is Your duty to keep the account details and passwords secure and to control the use of the account by only authorised persons. You must notify Us in writing immediately if any personnel are no-longer authorised to use an account or if any security features or passwords are compromised. All Contracts created before any such written notification is received shall be binding on You.

4. Price and payment

4.1 The Price to be paid shall be as set out in Our Invoice, or (in respect of Business Charge Cards) be the amount required by Us for the Order. Prices exclude any inspection, delivery, installation, training and/or support service charges unless separately identified in the Invoice. We reserve the right to vary Our prices (howsoever advertised) from time to time without prior notice.

4.2 Payment for all Goods purchased by non-credit account holders shall be made prior to delivery. Payment shall not be deemed to have been made until cleared funds are received in Our bank.

4.3 For credit account holders, unless otherwise agreed in writing, and providing You are within Your credit account limits, payment for Goods supplied by Us are strictly net cash 30 days from the date of Invoice except in the case of transactions where different terms are agreed by Us in writing beforehand. Where You make payment by credit card We may, at Our absolute discretion, make the transaction subject to a handling fee, but you will be notified of this before any such charge is made. We may collect payments by Direct Debit where this facility is agreed. We may at any time on or after acceptance by notice in writing to You vary the terms of payment by demanding immediate payment or, at Our option, adequate security for sums due.

4.4 Time for payment shall be of the essence. We reserve the right to charge interest at 5 per cent above Barclays plc base lending rate from the time being in force on Invoices (or where payment is by Business Charge Cards as agreed with You) overdue for payment. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount. Interest may in Our absolute discretion, be added to statements of account and any interest due and unpaid by You will be left as an outstanding balance. We reserve the right to add the costs incurred by Us in collecting the account through a third party acting on Our behalf to any overdue account.

4.5 If any payment shall not be paid on its due date or if Your credit limit is exceeded We shall be entitled to suspend all further deliveries until such payment is received. The right to suspend deliveries under this paragraph shall be in addition to any other remedies to which We are entitled.

4.6 All Prices are exclusive of any applicable VAT, for which You shall be additionally liable. Prices quoted do not include packaging costs and are net ex-works. Unless stated on quotation extra charges shall be made for packaging and for **supplying goods on any terms other than ex-works. For Consumers any VAT or such additional charges shall be separately identified in Our Invoice.**

4.7 All payments must be made by You in the currency included in Our Invoice (or where payment is by Business Charge Cards as agreed with You) by cleared cheque, credit or debit card or transfer to such bank account as We may from time to time notify in writing to You. Payments are not deemed to be made until cleared funds are received into Our bank account.

4.8 You are not entitled to withhold payment of the Price or to claim set off against any payments due to Us.

4.9 Credit facilities are based upon settlement within agreed terms of settlement, and any failure to adhere to such agreed terms may result in credit facilities being withdrawn by Us without notice.

5. Delivery

5.1 We will deliver the Goods to the delivery address stated in Our Invoice (or, where payment is by Business Charge Card, as agreed with You). You are required to be able to accept the Goods within Normal Working Hours. If You cannot accept delivery, We may re-arrange delivery provided that We reserve the right to charge You for any delivery costs incurred.

5.2 We shall only be required to deliver to a reception area on the ground floor of Your premises. You must ensure that a

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responsible person is available for accepting delivery of the Goods. Where there is no-one to accept delivery of the Goods from a courier then the courier will leave a notice that they have tried to deliver to the address and You will be responsible for arranging delivery from the courier. Any additional charges for failed deliveries shall be Your responsibility to settle with the courier and/or Us.

5.3 Once Goods have been delivered to the delivery address Goods are at Your own risk and We will not be liable for their loss damage breakage or destruction.

5.4 **Where You are purchasing as a Consumer**, then unless We agree otherwise with You, We will normally ensure that Goods are delivered to You no later than 30 days from the day after You submitted Your Order to Us. If We cannot deliver Goods to You within 30 days, then We will give You prior notification and arrange an alternative date. If You do not agree to the alternative date, then You are entitled to cancel the Order and receive a full refund.

5.5 **Where You are purchasing as a Business Customer**, We shall use reasonable endeavours to dispatch Goods to You by the estimated delivery date, but time shall not be of the essence for delivery. If a delay is likely, We shall contact You within 30 days of the delay. You will, as Your sole remedy, be entitled to cancel the Order and require any monies paid to Us in respect of that Order to be refunded. In order to cancel, You must send written notice of cancellation to Us after the estimated delivery date but before actual delivery of the Goods

5.6 In all cases any time or date for delivery is an estimate only and We shall not accept liability for the consequences of any failure to deliver within the stated time or on a stated day, where this is caused by circumstances beyond Our reasonable control, such as delays caused by delivery companies or manufacturer lead times.

6. Acceptance of Goods On Delivery

6.1 If the Goods delivered are not what You Ordered or have been delivered to You by mistake or the delivery is of an incorrect quantity then You must notify Us of the problem by telephone email or fax immediately and confirm this in writing within 48 hours of the delivery in question. After this time from delivery unless You have notified Us in writing to the contrary, You shall be deemed to have accepted the Goods. **Where You are buying in the capacity of a Consumer, Your statutory rights are not affected.**

6.2 Upon delivery of the Goods, You will be asked to sign a Proof of Delivery to acknowledge safe receipt. It is Your responsibility to ensure that the number of packages delivered corresponds with the number stated on the delivery note. Where a discrepancy occurs or where there is evident damage to the packaging, You should either note this on the Proof of Delivery or refuse to accept delivery of the Order.

6.3 We shall not be liable for discrepancies or damage evident on delivery where You accept delivery and sign the Proof of Delivery without amendment.

6.4 You may request a Proof of Delivery, provided that this request is made within 30 days of the dispatch confirmation and We shall use reasonable endeavours to provide such proof. Thereafter, delivery shall be deemed to have been successfully completed.

6.5 In the event that any Goods delivered to You do not correspond with the Goods in the Order, or have been delivered to you by mistake, or the delivery is of an incorrect quantity then You will be under a duty to take reasonable care of such Goods and to contact Our Customer Services team no later than 14 Working Days after receipt of the Goods. We will then arrange for a courier to collect the Goods and replacements to be supplied on a credit and recharge basis

7. Title and Risk

7.1 Title to the Goods shall not pass from Us until We have received in full (in cash or cleared funds) payment of all sums due to Us in respect of:

- (a) the Goods; and
- (b) all other sums which are or which become due to Us # from You on any account with You whatsoever. Upon receipt of full cleared payment, title to the Goods shall automatically pass to You.

7.2 The risk in any Goods supplied by Us shall pass to You on delivery and You should insure accordingly. Goods supplied hereunder shall be at Your risk from the time of delivery to You and delivery to a carrier (whether or not engaged by Us) shall be deemed to be delivery to You. Any goods returned to Us in accordance with paragraph 10 hereof shall remain at Your risk notwithstanding their delivery to Us.

7.3 In the event of You entering into liquidation or having a winding up order made against You, or You entering into any composition with Your creditors, or a receiver, receiver and manager or administrative receiver being appointed over Your assets or income or any part thereof, or in the event of You being an individual or individuals You committing any act of bankruptcy, or having any bankruptcy petition presented against You, or if You have failed to pay for any Goods on the

due date, We may in addition to Our other rights rescind without liability to You any outstanding and unexecuted Contracts and We may by Our duly appointed representatives enter Your premises (or any other location where the Goods are located insofar as You are entitled to or able to procure such access) at Your expense and recover all Goods in respect of which title shall not have passed to You.

7.4 Until any title in the Goods has passed to You, You must (a) hold such Goods in a fiduciary capacity as bailee for Us; (b) store the Goods (at no cost to Us) separately from all other Goods of Yours or any third party in such a way that they remain readily identifiable as Our property; (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and (d) maintain the Goods in satisfactory condition and (e) keep them insured on Our behalf to their full replacement value against all risks to Our reasonable satisfaction and on request produce the policy of insurance to Us with Our interest noted thereon.

7.5 In the event of You reselling or otherwise disposing of the Goods or any part thereof before title to them has passed to You, You will, until payment is made in full to Us of the Price of the Goods, hold in trust for Us all rights under any such contract of sale or other contract in pursuance of which the Goods or any part thereof are disposed of, or any contract by which property comprising the said Goods or any part thereof is or is to be disposed of and any monies or other consideration received for them, and such proceeds are to be used first in discharge of any outstanding indebtedness to Us. Further if You have not received the proceeds of any such sale You will if called upon to do so by Us, upon demand, assign to Us all rights against the person or persons to whom Our Goods have been sold.

8. Cancellation By You , Your Rights and Additional Obligations

This paragraph only applies where You are purchasing as a Consumer. Business customers do not have the right to cancel an Order.

8.1 Where You are purchasing the Goods as a Consumer You entitled to cancel Your Order for any reason until, but no later than the end of the seventh Working Day after the day of receipt of the Goods.

8.2 You should cancel Goods purchased from Us by sending a written notice of cancellation by post or hand delivery addressed to Customer Services at Bearmach House Unit 8 Pantglas Industrial Estate Bedwas Caerphilly CF83 8GE or by fax to +44(0)29 20 865 586 or by e-mail to [complaints@bearmach.com]

8.3 On cancellation of an Order, You must return the Goods to Us in their original condition and undamaged. You must obtain proof of delivery for any returns to Us. When You cancel an Order, You will have to pay the carriage costs for returning the Goods to Us unless We have not been able to supply the Goods as ordered and have substituted alternative Goods. You must take reasonable care to ensure that the Goods are properly packaged so that they will not be damaged whilst in transit. If You do not arrange to return the Goods to Us, then You are under a duty to make the Goods available for collection at Your expense from the address to which they were delivered.

8.4 When You cancel an Order, We will refund the Price paid, less any direct cost of recovering the Goods (when applicable), as soon as reasonably possible after receipt of the Goods providing You return the Goods in good saleable condition in their original packing materials with seals unopened, to Our address as described above.

8.5 Whilst in possession of the Goods You are under a statutory duty to take reasonable care of them. We reserve the right to claim against You for Goods returned which have been made unfit for resale or damaged whilst in Your possession.

8.6 If You have any questions about cancellation, or use of the Goods You should contact Us before You place Your Order.

9. Our Right to cancel

9.1 We may cancel any Contract between Us and You if We have insufficient stock to deliver the Goods that You have Ordered, or if We do not deliver to Your area, or where there has been a typographical or other error in the pricing information or description or if We cannot deliver due to reasons of Force Majeur.

9.2 If We decide to cancel a Contract then We will notify You by e-mail, letter, fax or telephone and will re-credit Your account any sums paid to Us as soon as reasonably possible.

9.3 We will not be obliged to pay You any compensation for losses or disappointment suffered or incurred by You as a result of such cancellation.

9.4 We shall not be liable to You or be deemed to be in breach of Our Contract by reason of any delay in performing or any failure to perform any of Our obligations in respect of the Goods if the delay or failure was due to Force Majeur.

10. Defective Goods & Returns

10.1 In the event that Goods are found to be defective at any time within the first 15 Working Days from delivery then please contact our Customer Services team immediately that You become aware of the defect, ensuring that You have the item's serial number available to provide to Our staff. Different manufacturers have differing policies for dealing with Goods which are termed 'dead on arrival', meaning that the Goods are found to be faulty either on delivery or very shortly afterwards. You will therefore be advised by Our Customer Services team of the relevant manufacturer's returns policy. We will not charge you for the collection of the Defective Goods. It is Your responsibility to package and secure the Goods prior to collection to prevent damage during their return to Us.

10.2 We shall at our option repair or replace such Defective Goods (or the defective part) and only if a repair or replacement is not possible or would be disproportionate to the price of such Goods We shall at our discretion refund the price of such defective Goods at the pro-rata Contract Price provided that You return the defective Goods to Us with all internal and external parts that were delivered with the Goods.

10.3 If We arrange for a courier collection of your Goods, this will normally take place between 9.00am and 5.30pm, and it is Your responsibility to ensure that someone will be present at the collection address when the courier arrives. If such collection fails due to no one being available at the collection address We will make a re-collection charge to You.

10.4 On receipt by Us of the returned Goods, if following the testing process the Goods are found to be in good working order without defect, We will return the Goods to You, and the carriage costs of this return will be Your responsibility. Please note that if You have, in the meantime, required Us to provide You with replacement Goods before completion of the testing process, You will be liable to pay for these Goods. If, when we examine the defective Goods, it is evident that the defect has arisen because you have failed to follow Our or the manufacturer's instructions as to the storage, installation, commissioning, use or maintenance of the Goods, or if any other abuse is evident, or if You have altered the Goods without Our written consent then We reserve the right to refuse a repair, replacement or refund.

10.5 You should note that We adhere to individual manufacturers' guidelines in respect of acceptable deviation of quality of certain items. Therefore, we reserve the right not to accept Goods considered by you to be defective if the error or fault is within the manufacturer's accepted manufacturing tolerances. If you have any doubt, please contact Our Customer Services.

10.6 Warranty Claims

- (a) If Goods become faulty more than 30 days after delivery then You are advised to contact Our Customer Services department who will help You make (if applicable) a claim under the manufacturer's warranty procedure or under Our warranty procedure according to the warranty (if any) given by Us and shown in the edition of Our catalogue that was current when You made Your Order. Unless otherwise stated in the manufacturer's documentation, all Goods carry a manufacturer's warranty.
- (b) If You wish to make a manufacturer's warranty claim, You must comply with the manufacturer's instructions and warranty procedure, completing any warranty forms that may be completed, and providing proof of purchase. In order to resolve Your problem as quickly as possible, We will refer you to the manufacturer who will deal directly with the return. In these instances, We will provide you with the contact information for the relevant manufacturer.
- (c) All manufacturers' warranties provided under these Terms & Conditions shall be invalidated if the Goods have been worked upon, altered or damaged in any way by You or your employees or agents, or if the Goods have not been used in accordance with the manufacturer's instructions.
- (d) You should note that certain Goods have a reduced warranty period. In particular, Goods specified as 'refurbished' are only subject to a six month warranty from the date of delivery. Your statutory rights are not affected when you purchase such Goods.

10.7 Return for credit

- (a) In the event that We, at Our absolute discretion, agree to accept the return for credit of unwanted Goods, the Goods must be returned with Our prior written agreement within 14 days of delivery. The Goods must be unopened, with the manufacturers' seals intact and in perfect re-saleable condition. All Goods returned in these circumstances may be subject to a 15% re-stocking fee. Please ensure that the Goods You have purchased are to your specification prior to breaking the manufacturers' seals. This will avoid disappointment and the Goods being rejected, should You wish to return them.
- (b) Any Goods returned unopened, with the manufacturers' seal intact and in re-saleable condition, outside of the 14 days specified in clause 10.7(a) may be returned for credit subject to Our prior approval and absolute discretion and shall be decided by Us on a case-by-case basis. All Goods returned in these circumstances will be subject to a reasonable re-stocking fee to cover our administrative charges.

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(c) No Goods on which seals have been broken can be returned for credit.

11. Warranty & Exclusions

11.1 We are a reseller of Goods and do not warrant the Goods ourselves save where this is expressly shown or referred to in the edition of Our catalogue which was current at the date of Your Order. We will pass through to You the benefit of any warranty from the manufacturer that is still in effect for the Goods that You purchase. Such warranty is offered by Us subject to the terms and conditions and limitations of the relevant warranty from the manufacturer.

11.2 Subject to Our obligations in relation to defective goods set out in paragraph 10 above and to Our Warranty (if any) for the Goods where this is expressly shown or referred to in the edition of Our catalogue which was current at the date of Your Order, We make no representation that Goods not manufactured by Us (or their performance) are as advertised or represented by the manufacturers. You shall, in determining the fitness for the purpose of the Goods rely entirely on Your own skill and judgement and not on Ours.

11.3 In the event that You should have a warranty claim that is within the relevant warranty terms for Your Goods then You should kindly contact Us so that We may be the first point of contact for warranty service for You.

11.4 The above warranty is in lieu of all implied and express warranties, conditions and/or representations, which are excluded to the fullest extent possible. Save in respect of claims for death or personal injury arising from Our negligence, in no event will We be liable for any damages arising from lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of Us whether such damages were foreseeable or actually foreseen.

11.5 **Your Statutory Rights as a Consumer are not affected by this paragraph.**

12. Limitation of Liability

IMPORTANT PLEASE READ THIS CLAUSE CAREFULLY

Because the potential losses which You might suffer as a result of any breach of contract by Us are more readily ascertainable by You and because such losses could be wholly disproportionate to the Contract Price and to enable Us to keep the Contract Price as low as reasonably possible, You agree that We limit Our liability in accordance with the following provisions.

12.1 Subject to paragraph 10, the following provisions set out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You in respect of:

- (a) any breach of these Terms & Conditions;
- (b) any use made or resale by you of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

12.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded.

12.3 Nothing in these Terms & Conditions excludes or limits Our liability or that of Our servants, agents or employees for:

- (a) death or personal injury caused by Our negligence; or
- (b) any matter which it would be illegal for us to exclude or attempt to exclude our liability; or
- (c) fraud or fraudulent misrepresentation.

12.4 Subject to paragraphs 12.2 & 12.3:

- (a) Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price; and
- (b) We shall not be liable to You for loss of revenue, loss of profit, loss of business, loss of contracts, loss of anticipated savings, or for loss or depletion of goodwill or reputation in each case whether direct, indirect or consequential, or any claims for consequential special or indirect compensation whatsoever and howsoever caused which arise out of or in connection with the Contract.

12.5 **Where You are purchasing as a Consumer, the provisions of this paragraph 12 do not affect Your statutory rights as a Consumer, nor do they affect Your right to cancel an Order.**

13. Termination

13.1 In addition to all other remedies We may have against You for breach of contract, We may terminate any Contract with You upon written notice delivered to You and may suspend delivery of the Goods in whole or in part and may take repossession of Goods and demand any security payment on account as We may require if:-

- (a) any Invoice due to Us is outstanding in excess of agreed credit terms;
- (b) You do not comply with the terms of any Contract or with any precondition demanded by Us;
- (c) You fail to take delivery of Goods from Us;
- (d) You are bankrupt or insolvent or You enter into any composition with Your creditors or if You are the subject of a winding up resolution or petition or receive notice of intended bankruptcy proceedings or fail to provide satisfactory credit references to Us if required to do so.

13.2 Our right to suspend delivery also applies to Our right to suspend any agreed support services in respect of the Goods sold to You.

13.3 Upon the happening of any of the above-mentioned events We shall be entitled to a lien upon any of Your Goods in Our possession.

14 Export Orders

14.1 In all such contracts the terms as to packaging, carriage and insurance are those previously agreed in writing between You and Us but, unless otherwise agreed in writing, payment shall be by irrevocable letter of credit drawn on a London Clearing Bank.

14.2 Any limitations on the exclusion of liability in Paragraph 12 hereof shall not apply in relation to a Contract with You if Your place of business is not within the United Kingdom and if

- (a) the Goods to be supplied by Us are to be exported from the United Kingdom, or
- (b) the acts constituting Your offer and Our acceptance have been done in the territories of different states, or
- (c) the Contract provides for the Goods to be delivered to the territory of a state other than that within whose territory those acts were done.

15. Trade Marks & Trade Names

15.1 Trade names and marks (other than Ours) are not always indications of the actual manufacturer of a particular product and may rather be indicative of general use systems and machines associated with such products.

15.2 In the case of component purchases, if You require a particular brand of product should, then before placing an order, please check with Us to confirm the identity of the manufacturer of the component that You are proposing to purchase.

15.3 Both parties hereby acknowledge the intellectual property rights of suppliers and manufacturers of the Goods appearing in Our sales literature and on Our website.

16. Communications

16.1 All notices and communications from You should be in writing and sent to Us at the address set out in paragraph 1 above. We will send any notices or communications to You at Your address or at Our option the delivery address where this is different. We may send notices to You electronically or by fax where You provide an e-mail address or fax number.

16.2 Notices and communications shall be deemed to have been received:

- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax on a Working Day prior to 4.00 pm, at the time of transmission and otherwise on the next Working Day.
- (d) If by email on a Working Day prior to 4.00 pm, at the time of transmission and otherwise on the next Working Day.

17. Assignment & Third Party Rights

17.1 You must not transfer any Contract made with Us under these Terms, & Conditions without written authority from Us, as it is personal to You. This authority will not be refused without good reason.

17.2 No third party shall be allowed to enforce any rights under this Contract. We hereby exclude the application of the Contracts (Rights of Third Parties) Act 1999 to each and every Contract made under these Terms & Conditions.

18 General Terms of Business

18.1 You confirm that, in agreeing to accept the Terms & Conditions, You have not relied on any representation save insofar as the same has expressly been made a part of these Terms & Conditions and You agree that You shall have no remedy in respect of any representation. Nothing in these Terms & Conditions shall limit or exclude Our liability in respect of any fraudulent or negligent misrepresentation whether or not such has become a part of the Terms & Conditions.

18.2 These Terms & Conditions, together with Our current Prices, Our Invoice, Your delivery details, Your contact details and Our web site's Legal Notices and any supplementary Terms & Conditions stated thereon and the manufacturers terms and conditions, set out the whole of Our agreement relating to the supply of Goods to You by Us. Nothing said by

any sales person or representative or included as a general description in a web site, catalogue or brochure should be understood as a variation of these Terms & Conditions or as a representation about the nature or quality of any Goods offered for sale by Us. Save for fraud or fraudulent misrepresentation by Us, We shall have no liability for any such representation being untrue or misleading.

18.3 If any part of these Terms & Conditions shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed to be severable from these Terms & Conditions and shall not affect the validity and enforceability of any of the remaining provisions of these Terms & Conditions.

18.4 No waiver by Us of any breach of any of these Terms & Conditions shall be construed as a waiver of any preceding or succeeding breach of any provision in these Terms & Conditions.

18.5 If We accept Your Offer and a dispute between the parties arises, the laws of England and Wales and its Courts shall have exclusive jurisdiction to determine such disputes and You irrevocably submit to that exclusive jurisdiction.

18.6 If You have any complaints about the Goods please contact Our Customer Services Department by post or hand delivered letter addressed to Customer Services at Bearmach House Unit 8 Pantglas Industrial Estate Bedwas Caerphilly CF83 8GE or by fax to +44(0)29 20 865 586 or by e-mail to [complaints@bearmach.com]

18.7 Your Statutory Rights as a Consumer are not affected by anything contained in these Terms & Conditions.