

Terms and Conditions of Sale dated June 2018 for Berry bpi UK companies

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this Condition 1 apply in these Conditions.
- bpi** means the UK Berry bpi group company supplying the Goods which is named on the Order Confirmation.
- bpi Party** means bpi, its directors, employees, agents, subsidiaries, parent and/or associated companies and sub-contractors.
- Buyer** means the person, firm or company who purchases the Goods from bpi.
- Conditions** means these standard terms and conditions of sale.
- Contract** means any contract between bpi and the Buyer for the sale and purchase of the Goods, incorporating the Conditions.
- Delivery Point** means the place where delivery of the Goods is to take place under Condition 7.1.
- Goods** means any goods agreed in the Contract to be supplied to the Buyer by bpi (including any part or parts of them).
- Losses** means loss of profit, loss of reputation, liabilities, demands, damages, costs, fines, judgments, penalties, claims, interest, expenses and all other losses (including, without limitation, any direct, indirect or consequential losses and any legal and other professional fees and disbursements, including legal and other fees and disbursements incurred in defending successfully, in whole or in part, a claim for liability).
- Order** means a purchase order, acceptance of a quotation for Goods or other order for Goods.
- Order Confirmation** means the last written order confirmation for the Goods made on bpi's printed order confirmation form, issued by bpi and forming part of the Contract.
- 1.2 Headings in these Conditions shall not affect their interpretation.
- 1.3 A reference to a particular law is a reference to it as it is in force from time to time taking account of any amendment, extension, application or re-enactment.
- 1.4 Words in the singular include the plural and in the plural include the singular.
- 1.5 A reference to one gender includes a reference to the other gender.
- 1.6 A reference to writing or written includes e-mail but not SMS messaging.

2. QUOTATIONS AND BASIS FOR SALE

- 2.1 Each Order received by bpi from the Buyer shall constitute an offer by the Buyer to buy Goods subject to the Conditions.
- 2.2 No Order from the Buyer shall be deemed to be accepted by bpi and a Contract shall not be capable of creation until the Order Confirmation is issued by bpi or (if earlier) bpi delivers the Goods to the Buyer.
- 2.3 Acceptance by the Buyer of delivery of the Goods shall (without prejudice to Condition 2.2) be deemed to constitute unqualified acceptance of the Conditions.
- 2.4 Quotations are provided by bpi on the basis that no Contract shall come into existence except in accordance with Condition 2.2 or Condition 2.3. Any quotation is valid for a period of 30 days only from its date, provided that bpi has not previously withdrawn it in writing.
- 2.5 The Buyer is solely responsible for ensuring that the terms of its Order and any applicable specification are complete and accurate.
- 2.6 No Order from the Buyer which has been accepted by bpi in accordance with Condition 2.2 may be cancelled by the Buyer except with bpi's written agreement.

3. APPLICATION OF CONDITIONS

- 3.1 Subject to any variation under Condition 3.3, the Conditions and the Order Confirmation alone shall govern and be incorporated into the Contract to the exclusion of all other terms and conditions (including any terms and/or conditions which the Buyer purports to apply under any Order, confirmation of order, specification or other document or imply by trade custom, practice or course of dealing) unless and to the extent expressly stated in the Order Confirmation (for example where this cross refers to the Buyer's specification as the applicable specification for the Goods).
- 3.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's Order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract and shall only form part of the Contract if expressly stated in the Order Confirmation as being incorporated into the Contract.
- 3.3 Any variation to the Conditions must be expressly agreed in writing by bpi.
- 3.4 The Buyer acknowledges that it has not relied on any statement, promise, representation or warranty made or given by, or on behalf of, bpi which is not set out in the Contract. This Condition 3.4 shall not exclude or limit bpi's liability for fraudulent misrepresentation.

4. QUANTITY AND DESCRIPTION OF GOODS

- 4.1 The quantity and description of the Goods shall be as set out in the Order Confirmation, subject in the case of the quantity to the tolerances stated in Condition 8.1.
- 4.2 All samples, trade cards, drawings, descriptive matter, models, specifications and advertising provided or issued by bpi and

- any descriptions or illustrations contained in bpi's catalogues, brochures or on its website are for illustrative purposes only and do not form part of the Contract unless expressly stated in the Order Confirmation as being the specification to which the Goods are being manufactured.
- 4.3 bpi may make changes to the specification to which the Goods are being manufactured where required to conform to applicable legislation without referring back to the Buyer for approval. Where any such changes are made references to specification in the Order Confirmation and Condition 11.2 shall refer to the amended specification.
5. **PRICE**
- 5.1 The price(s) for the Goods shall, subject to the remaining terms of this Condition 5, be the price(s) and/ or (as the case may be) the basis for the price(s) stated in the Order Confirmation.
- 5.2 bpi reserves the right at any time to withdraw any discount from its normal prices and/ or to revise prices to take into account inflation and/ or increases in costs including (without limitation) costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates.
- 5.3 Origination expenses (including, without limitation, the cost of acquiring machinery or adapting it to the Buyer's manufacturing requirements) shall be added to the price and may be charged separately prior to delivery of the Goods.
- 5.4 The price excludes VAT or any other applicable tax or duty unless otherwise stated in the Order Confirmation and will be charged in addition to the price at the applicable prevailing rate.
6. **PAYMENT**
- 6.1 Payment of each invoice is due (in the currency in which the price is stated in the Order Confirmation) not later than 30 days from the end of the month in which the invoice is issued unless otherwise determined by bpi pursuant to Condition 6.6 or Condition 6.7. Invoices can be submitted on or following delivery (or where the Buyer refuses or fails to accept delivery, the original due date for delivery).
- 6.2 Time for payment shall be of the essence.
- 6.3 No payment shall be deemed to have been received until bpi has received cash or cleared funds.
- 6.4 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, retention, counterclaim, discount, abatement or otherwise.
- 6.5 If the Buyer fails to pay bpi any sum due under the Contract by the due date, the Buyer shall be liable to pay interest to bpi on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of National Westminster Bank Plc accruing on a daily basis until payment is made, whether before or after any judgment. bpi reserves the right (at its option) to alternatively claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.6 If, in the opinion of bpi, the credit-worthiness of the Buyer deteriorates, bpi may prior to delivery require full or partial payment of the price or the provision of security for payment of a type (including, without limitation, an irrevocable letter of credit confirmed by a United Kingdom bank) and in a form acceptable to bpi.
- 6.7 Any credit extended to the Buyer may be changed or withdrawn at any time.
- 6.8 All payments made by the Buyer to bpi shall be apportioned, first to Goods which have been resold by the Buyer and then to Goods which remain in the possession or under control of the Buyer notwithstanding any purported contrary apportionment by the Buyer.
- 6.9 bpi shall be entitled at any time or times, without notice to the Buyer, to set off any sum or sums owing to it from the Buyer against any sums owed to the Buyer by bpi whether any such sum is present or future, liquidated or unliquidated, under this Contract or not and irrespective of the currency of its denomination. Any exercise by bpi of its rights under this Condition shall be without prejudice to any other rights or remedies available to it under this Contract or otherwise.
7. **DELIVERY**
- 7.1 The Goods are to be delivered to the delivery address specified in the Order Confirmation.
- 7.2 Any dates specified by bpi for delivery and/ or despatch of the Goods are estimates only. Time for delivery is not of the essence and shall not be made so by notice from the Buyer.
- 7.3 bpi may deliver the Goods by separate instalments. Each instalment shall be a separate Contract which shall be invoiced and paid for as such. No termination, repudiation or rescission of any one Contract relating to an instalment shall entitle the Buyer to terminate or rescind any other Contract or instalment.
- 7.4 **No liability for delayed delivery**
- Subject to the other provisions of the Conditions, bpi shall not be liable to the Buyer or any third party for any Losses arising from or in connection with any delay in the delivery of the Goods (even if caused by bpi's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract.
- 7.5 **Buyer's responsibility for unloading Goods and any delay in unloading**
- The Buyer shall be responsible for unloading the Goods at the Delivery Point on the delivery date and for providing all necessary access, equipment and manual labour for doing so. The Buyer shall indemnify and keep indemnified bpi against any and all Losses incurred by or made against any bpi Party arising from or in connection with any delay by the Buyer in unloading the Goods.
- 7.6 The Buyer shall inspect the Goods as soon as reasonably practicable following delivery and in any case within 7 days of delivery.
- 7.7 Pallets used in the delivery of Goods shall be returned as soon as possible after use to bpi's carrier in a condition no worse than they were received at the time of delivery.
- 7.8 If for any reason the Buyer refuses or fails to accept delivery of any of the Goods when they are ready for delivery, or bpi is unable to deliver the Goods because the Buyer has not taken any action necessary on its part for delivery:-
- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by bpi's negligence) at the time when (had it not been for the actions, or lack of action of the Buyer) delivery would have taken place;
- (b) bpi shall be entitled (at its discretion) to store the Goods until such time(s) as delivery may be effected and recover from the Buyer any loss and/ or additional costs incurred as a result of such refusal or failure (including, without limitation, storage and insurance from the original due date of delivery); and
- (c) bpi shall be entitled to terminate the Contract if delivery of the Goods is not effected within a reasonable time from the original due date of delivery, dispose of the Goods as bpi may (at its discretion) determine and recover from the Buyer any loss and/ or additional costs incurred as a result of such refusal or failure.

8. VARIATIONS IN QUANTITY AND NON DELIVERY

8.1 bpi shall be deemed to have fulfilled its obligations under any Contract if the quantity of Goods delivered exceeds or is less than the quantity specified in the Order Confirmation provided that it falls within the tolerances set out below:-

Quantity Ordered	Permitted Variation Plain Goods	Permitted Variation Printed Goods
Over 1 tonne	+/-10%	+/-20%
500 to 999 kg	+/-15%	+/-30%
350 to 499 kg	+/-25%	+/-35%
Less than 350 kg	+/-35%	+/-35%

8.2 If the quantity of Goods delivered differs from the quantity specified in the Order Confirmation the Buyer shall pay for the quantity delivered.

8.3 The quantity of Goods (in respect of any particular Order Confirmation) as recorded by bpi upon despatch from bpi's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence to the contrary.

8.4 Failure to deliver, damage to Goods in transit and Buyer's exclusive remedy

bpi shall not be liable to the Buyer for:-

- (a) shortages in quantity delivered outside the tolerances permitted by Condition 8.1 unless a written claim is received by bpi for short delivery within 7 days of delivery of the Goods; or
- (b) non-delivery of Goods unless a written claim is received by bpi within 7 days from the date of bpi's invoice; or
- (c) damage to the Goods in transit before delivery unless a written claim is received by bpi within 7 days of delivery of the Goods.

8.5 Where bpi is liable in any of the circumstances covered in Condition 8.4, bpi's only obligation shall be either (at its option) to make good any shortage or non-delivery and/ or as appropriate to replace or repair any Goods found to be damaged and/ or to refund or credit the price of such Goods to the Buyer.

9. INTERNATIONAL SUPPLY CONTRACTS

Where Goods are sold CIF or FOB on the basis of international trade terms, the meaning given to such terms in Incoterms (as revised from time to time) shall apply and prevail over any inconsistent provisions contained in the Conditions.

10. RISK AND TITLE

10.1 Subject to Condition 7.8(a), the Goods are at the risk of the Buyer from the time of delivery.

10.2 Goods returned by the Buyer to bpi in accordance with the Conditions shall remain at the risk of the Buyer until delivery to bpi's premises.

10.3 Ownership of the Goods shall not pass to the Buyer until bpi has received in full (in cash or cleared funds):-

- (a) all sums due to it under the Contract; and
- (b) all other sums which are, or which become, due to bpi from the Buyer in terms of any other contract.

10.4 Until ownership of the Goods has passed to the Buyer, the Buyer shall:-

- (a) hold the Goods on a fiduciary basis as bpi's bailee;
- (b) keep the Goods free from any charge, lien or other encumbrance;
- (c) store the Goods (at no cost to bpi) separately from all other goods of the Buyer or any third party so that they remain readily identifiable as bpi's property;
- (d) mark the Goods so as to be clearly identifiable as bpi's property, provided that such markings are not indelible and do not damage the Goods;
- (e) take proper care of the Goods and take all reasonable steps to prevent any damage to, or deterioration of, them;
- (f) comply with the insurance requirements in Condition 10.5;
- (g) notify bpi immediately upon the happening of any of the events set out in Condition 10.9;
- (h) not destroy, deface or obscure any identifying mark or packaging on, or relating to, the Goods;
- (i) not part with possession of the Goods otherwise than in accordance with Condition 10.6; and
- (j) give bpi such information relating to the Goods as bpi may from time to time require.

10.5 Until ownership passes, the Buyer shall insure and keep insured the Goods for their full price against all risks to the reasonable satisfaction of bpi and shall whenever requested by bpi produce a copy of the policy of insurance. Without prejudice to the other rights of bpi, if the Buyer fails to do so all sums owing by the Buyer to bpi shall become due and payable immediately. The proceeds of any claims on such insurance policy shall be held in trust for bpi and the Buyer shall promptly account to bpi with such proceeds.

10.6 The Buyer may resell the Goods before ownership has passed to it with bpi's prior written consent (but not otherwise) provided:-

- (a) any sale will be effected in the ordinary course of the Buyer's business at not less than the full price (being the cost of the Goods as invoiced by bpi to the Buyer);
- (b) as between the Buyer and its customer the Buyer shall sell the Goods (at its own cost and expense) as principal and the Buyer shall not commit bpi to any contract with or liability to the customer or any other person;
- (c) as between bpi and the Buyer, the Buyer shall sell the Goods in a fiduciary capacity as agent for bpi; and
- (d) notwithstanding any agreed period of credit for payment of the price of the Goods the Buyer shall pay the proceeds of such sales to bpi (up to the aggregate amount then due to bpi) within 48 hours of receipt.

10.7 The Buyer acknowledges that as a consequence of its fiduciary relationship with bpi it is under a common law duty to hold the proceeds of any such sales in trust for bpi and not to mingle such proceeds with any other monies or pay them into an overdrawn bank account, such common law duty being unaffected by and wholly independent of the Conditions.

10.8 The Buyer agrees immediately upon being so requested by bpi to assign to bpi all rights and claims which the Buyer may have against its customers arising from such sales until ownership of the Goods sold by the Buyer to its customer has passed.

10.9 bpi reserves the right to repossess and resell any Goods to which it has retained title and bpi's consent to the Buyer's possession of the Goods and any right the Buyer may have to possession of the Goods shall terminate immediately if:-

- (a) any sum owed by the Buyer to bpi (whether under the Contract or otherwise) is not paid to bpi by the due date; or
- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/ its property or obtained against him/ it; or
- (c) the Buyer (being an individual) becomes unable to pay his debts within the meaning of section 268 of the Insolvency Act 1986 or enters into a voluntary arrangement or enters into any deed or arrangement with his creditors or if a petition is presented for the making of a bankruptcy order against him or if the Buyer takes or suffers any similar or analogous action; or
- (d) the Buyer (being a body corporate) becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or has an order made, or a resolution is passed, for its winding-up (otherwise than for the purposes of amalgamation or reconstruction previously approved in writing by bpi) or if a meeting is called to approve the appointment of a liquidator of the Buyer (including a provisional liquidator) or if a petition is presented to the Court for the appointment of a liquidator to the Buyer (including a provisional liquidator) or if a receiver, manager, administrative receiver or an administrator is appointed or a petition is presented to the Court for the appointment of an administrator to the Buyer or over any part of the Buyer's undertaking or if circumstances arise which might entitle the Court or a creditor to appoint a liquidator (including a provisional liquidator), receiver, manager, administrative receiver or administrator or which might entitle the Court to make a winding-up order or if the Buyer takes or suffers any similar or analogous action; or
- (e) Condition 14.2(b) applies.

10.10 bpi shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from bpi.

10.11 The Buyer hereby grants an irrevocable right and licence to bpi and its employees, agents and subcontractors to enter upon all or any of the Buyer's premises with or without vehicles during normal business hours for the purpose of inspecting and/ or repossessing Goods to which it has retained title.

10.12 Where bpi is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by bpi to the Buyer in the order in which they were invoiced to the Buyer.

10.13 On termination of the Contract, howsoever caused, bpi's (but not the Buyer's) rights contained in this Condition 10 shall remain in effect.

11. WARRANTIES AND EXCLUSIVE REMEDY

11.1 Good title

bpi warrants that it has good title to sell the Goods at the time when title passes to the Buyer in accordance with the Conditions.

11.2 Compliance with specification and fitness for particular purpose

- (a) bpi warrants (subject to the other provisions of the Conditions) that at the time of delivery and for a period of 3 months from the date of delivery (or where the Buyer refuses or fails to accept delivery, the original due date for delivery) the Goods shall:-
 - (i) correspond in all material respects with the written specification for the Goods that is included, or referred to, in the Order Confirmation subject in all cases to normal recognised trade tolerances; and
 - (ii) be reasonably fit for any particular purpose for which the Goods are being purchased if the Buyer has communicated that purpose in writing to bpi and bpi has confirmed in writing that it accepts that the Goods are reasonably fit to be used for that purpose.
- (b) In the case of silage film only, bpi warrants (subject to the other provisions of the Conditions) that for a period of 12 months from the date of delivery (or where the Buyer refuses or fails to accept delivery, the original due date for delivery) the Goods shall not degrade as a result of exposure to ultraviolet light.
- (c) In the case of any printed work on the Goods, where the printed work is a machine readable code or symbol:-
 - (i) bpi shall print the code or symbol as specified by the Buyer in accordance with the generally accepted standards and procedures for flexographic printing on flexible substrates; and
 - (ii) the Buyer shall be responsible for satisfying itself that the code or symbol reads correctly on the equipment to be used by those for whom the code or symbol is intended.

11.3 Bar codes

The Buyer shall indemnify and keep indemnified bpi against any and all Losses incurred by or made against any bpi Party arising from a bar code or symbol not reading or not reading correctly for any reason except to the extent that such Losses arise from any failure of bpi to comply with paragraph (c)(i) of Condition 11.2 which is not attributable to an error falling within tolerances generally accepted in the trade in relation to such printing.

11.4 Warranty conditions

bpi shall not be liable for a breach of any of the warranties in Condition 11.2 unless:-

- (a) the Buyer gives written notice of the breach to bpi within 7 days of the time when the Buyer discovers or ought reasonably to have discovered the breach; and
 - (b) bpi is given a reasonable opportunity after receiving the notice of the breach of testing the relevant Goods and the Buyer (only if requested to do so by bpi) returns such Goods to bpi's place of business for the examination to take place there.
- 11.5 bpi shall not be liable for a breach of any of the warranties in Condition 11.2 if:-
- (a) the Buyer makes any further use of the affected Goods after giving notice of breach; or

- (b) the breach arises:-
- (i) because the Buyer failed to follow bpi's instructions or (if there are none) good trade practice as to the storage, use or maintenance of the Goods; or
 - (ii) in respect of silage film, because of overstretching of the film, or exposure to insecticides or any form of sulphur; or
- (c) the breach is caused by fair wear and tear to the Goods; or
- (d) the Buyer alters, repairs or attempts to alter or repair the affected Goods without the written consent of bpi; or
- (e) the breach is otherwise caused by the Buyer, its employees, officers, agents, subcontractors and/ or any other third party.

11.6 Notwithstanding any specification for the Goods, bpi shall not have any liability to the extent that the Buyer approves a sample or proof of the Goods (including, without limitation, any printed work for the Goods) and the Goods conform to that sample or proof.

11.7 **No warranty as to compliance for non specified quality or purpose or as to fitness of Buyer's specification**

Given the nature of the goods that bpi manufactures and sells under the Conditions, and the range of purposes for which a Buyer may intend to use such goods, bpi can only accept responsibility for the quality and fitness for purpose of the Goods to the extent of the warranties in Condition 11.2. It is extremely important that the Buyer ensures that the specification of the Goods meets its requirements and that goods made to the specification will be fit for the Buyer's intended purpose.

11.8 **Buyer's exclusive remedy**

Subject to Conditions 11.3 to 11.6, if any of the Goods do not conform with any of the applicable warranties in Condition 11.2, bpi shall at its option repair or replace such Goods (or the defective part) or refund, or provide a credit of, the price of such Goods on a pro rata basis provided that, if bpi so requests, the Buyer shall return the Goods or the part of such Goods which is defective to bpi.

11.9 If bpi complies with Condition 11.8 then, subject to Condition 12.1, it shall have no further liability for a breach of any of the warranties in Condition 11.2 in respect of the affected Goods nor shall the Buyer be entitled to treat the breach or defective nature of such Goods as grounds for rescission of any Contract between the Buyer and bpi.

11.10 Goods may only be returned with bpi's prior written consent. Where there has been a breach of warranty for which bpi is liable or accepts liability, bpi shall reimburse the Buyer for the reasonable cost of return of the Goods.

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

11.12 **THE BUYER ACKNOWLEDGES AND ACCEPTS THAT THE WARRANTIES AT CONDITIONS 11.1 AND 11.2 ARE THE SOLE AND ENTIRE WARRANTIES PROVIDED BY BPI AND THAT THE REMEDIES AT CONDITION 11.8 ARE (SUBJECT TO CONDITION 12.1) ITS SOLE AND ENTIRE REMEDIES IN CONNECTION WITH THE GOODS.**

12. **LIMITATION OF LIABILITY**

12.1 Nothing in the Conditions excludes or limits the liability of bpi for:-

- (a) death or personal injury caused by bpi's negligence; or
- (b) defective products that arise under the Consumer Protection Act 1987; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) fraud or fraudulent misrepresentation; or
- (e) any matter which it would be unlawful for bpi to exclude or attempt to exclude its liability for.

12.2 Subject to Condition 12.1:-

- (a) the total liability of all bpi Parties in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising under or in connection with the Contract shall be limited to the Contract price, which in the case of any Contract that relates to an instalment of Goods (as referred to in Condition 7.3) means, for the avoidance of doubt, the price for such instalment only; and
- (b) no bpi Party shall be liable for:
 - (i) loss of revenue or profits; or
 - (ii) loss of production; or
 - (iii) loss of goodwill or injury to reputation; or
 - (iv) loss of business; or
 - (v) loss of business opportunity; or
 - (vi) loss of anticipated saving; or
 - (vii) loss of, or corruption to, data or information; or
 - (viii) any special, indirect or consequential loss or damage; or
 - (ix) any claims by a customer of the Buyer or any third party to whom the Buyer has sold or otherwise transferred the Goods,

in each case arising out of or in connection with the Contract.

bpi strongly recommends that the Buyer insures against all such potential loss, damage, expense and/ or liability.

12.3 bpi's prices are determined on the basis of the limits of liability set out in the Conditions. The Buyer may by written notice to bpi request bpi to agree a higher limit of liability provided insurance cover can be obtained for such higher limit. bpi shall use reasonable endeavours to effect insurance up to such limit and the Buyer shall pay upon demand the amount of any and all premiums. The Buyer shall disclose such information as the insurers shall require. In no case shall the Buyer be entitled to recover from bpi more than the amount received from the insurers with whom cover is instructed in accordance with this Condition 12.3.

13. **THIRD PARTY RIGHTS AND INTELLECTUAL PROPERTY**
- 13.1 The Buyer shall indemnify and shall keep indemnified bpi from and against any and all Losses incurred by or made against any bpi Party arising from:-
- (a) any claim by a customer of the Buyer or any third party to whom the Buyer has sold or otherwise transferred the Goods or any other use of the Goods; and
- (b) bpi's manufacture and supply of the Goods in compliance with the Buyer's requirements and/ or specifications for the Goods, including without limitation infringing any intellectual property rights of any third party and/ or the printing of any unlawful or libellous matter on the Goods.
- 13.2 Without prejudice to Condition 13.1, where Goods are exported for use outside the United Kingdom or the country of delivery, bpi shall have no liability to the Buyer if the Goods infringe or are alleged to infringe the rights of any third party and bpi hereby excludes to the fullest extent permissible under applicable law all such liability for any and all Losses suffered by the Buyer arising out of such infringement.
- 13.3 If at any time any allegation of infringement of third party intellectual property rights is made or is likely to be made bpi may, at its absolute discretion and own expense:-
- (a) modify or replace the Goods without detracting from their overall performance, so as to avoid infringement; or
- (b) procure for the Buyer the right to continue to use the Goods; or
- (c) repurchase the Goods at the price paid by the Buyer less depreciation at such rate as is applied by bpi to its own equipment.
- 13.4 The Buyer shall notify bpi immediately of any claim made or action brought or threatened in respect of the Goods alleging infringement of the rights of any third party. bpi shall be entitled, at its absolute discretion, to take control over the conduct of any such proceedings in such manner as it shall, at its absolute discretion, determine. In such circumstances the Buyer shall provide all such reasonable assistance as bpi may request and the cost of any such proceedings shall be borne by bpi.
- 13.5 Art work, sketches, pallets, gravure printing equipment and end plugs remain bpi's property unless their entire cost is included in the price and this is expressly stated in the Order Confirmation.
14. **TERMINATION**
- 14.1 If one or more of the events specified in Condition 10.9 occurs, bpi may, without prejudice to any of its other rights:-
- (a) stop any Goods in transit;
- (b) suspend further deliveries to the Buyer;
- (c) exercise its rights under Condition 10; and/ or
- (d) by notice in writing to the Buyer terminate any Contract with the Buyer with immediate effect.
- 14.2 bpi shall also be entitled to terminate any Contract by written notice with immediate effect if:-
- (a) there is a change of control of the Buyer which has not been approved in writing by bpi; or
- (b) the financial position of the Buyer deteriorates to an extent that, in the opinion of bpi, the Buyer's capability to fulfil its obligations under the Contract is placed in jeopardy.
- 14.3 The Buyer shall promptly notify bpi in writing of any change of control.
- 14.4 Upon termination of any Contract any indebtedness of the Buyer to bpi shall become immediately due and payable notwithstanding any provision to the contrary in such Contract or the Conditions and bpi shall be relieved of any further obligation to supply any Goods to the Buyer pursuant to such Contract.
- 14.5 The provisions of the Conditions which expressly or, by the nature of their terms, are implicitly intended to survive termination shall survive termination of the Contract.
15. **LIEN AND THE BUYER'S PROPERTY**
- 15.1 bpi shall be entitled to a general lien on all Goods and property owned by the Buyer in bpi's possession (although the Buyer may have paid for them in full) in satisfaction of the whole or part, as the case may be, of the unpaid price of Goods sold and delivered to the Buyer under any Contract.
- 15.2 Any property of the Buyer in bpi's possession or under its control and all property supplied to bpi by, or on behalf of, the Buyer shall be held by bpi at the Buyer's risk.
16. **CONFIDENTIALITY**
- All drawings, designs, specifications and information prepared by bpi shall be treated as confidential and shall not be disclosed to any third party without bpi's prior written consent or used by the Buyer other than for purposes authorised in writing by bpi.
17. **LICENCES AND CONSENTS**
- If any licence or consent of any competent authority is required for the acquisition, carriage or use of the Goods by the Buyer, the Buyer shall obtain this at its own expense and if requested produce evidence of the same to bpi on demand. Failure to obtain any licence or consent shall not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by bpi resulting from such failure shall be reimbursed by the Buyer promptly.
18. **ASSIGNMENT**
- 18.1 bpi may assign, transfer, mortgage, subcontract or deal in any other manner with the Contract or any part of it to any person, firm or company.
- 18.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of bpi, which consent bpi may refuse or make conditional in its absolute discretion.
19. **FORCE MAJEURE**
- 19.1 bpi shall not be in breach of the Contract, nor liable to the Buyer for any Losses arising from bpi's performance of the Contract being prevented, hindered, delayed, cancelled or rendered uneconomic, by reason of acts, circumstances, events, omissions and/ or accidents beyond bpi's reasonable control (a Force Majeure Event), including but not limited to any of the following:-
- (a) epidemic or pandemic or any act of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or similar actions;
- (c) terrorist attack, civil war, civil commotion or riots;
- (d) any labour dispute, including but not limited to strike,

- industrial action or lock-out;
- (e) fire, explosion or accidental damage;
- (f) loss at sea;
- (g) nuclear, chemical or biological contamination;
- (h) failure of plant or machinery;
- (i) difficulty or increased expense in obtaining workmen materials or transport, or other similar circumstances affecting the supply of the Goods;
- (j) difficulty in obtaining raw materials by bpi's normal source of supply;
- (k) difficulty in the manufacture of the Goods by bpi's normal means; and
- (l) difficulty in the delivery of the Goods by bpi's normal route or means of delivery.
- 19.2 In the case of a Force Majeure Event, bpi may in its absolute discretion terminate the Contract or cancel delivery of Goods to the Buyer or may, with the agreement of the Buyer, deliver Goods at an agreed rate of delivery commencing after any suspension of deliveries.
- 19.3 If due to a Force Majeure Event bpi has insufficient stocks to meet all of its commitments, bpi may apportion available stocks between its customers at its absolute discretion.
20. **HEALTH AND SAFETY**
- 20.1 Without prejudice to the provisions of Conditions 11 and 12, the Buyer agrees to pay due regard to any information supplied by bpi relating to the use and/ or maintenance of the Goods.
- 20.2 Without prejudice to the provisions of Condition 10, the Buyer shall ensure that Goods are safely and securely stored at all times.
21. **SEVERANCE**
- If any provision of the Contract or part of any provision is found by any court, tribunal or administrative body of competent jurisdiction to be illegal, invalid, void, voidable, unenforceable or unreasonable that provision or part-provision shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
22. **DATA PROTECTION**
- 22.1 References to Personal Data means any information that identifies, or could reasonably be used to identify, directly or indirectly, any individual. In entering into and performing the Contract bpi may handle Personal Data of the Buyer and/ or the Buyer's employees, agents, customers and other parties.
- 22.2 bpi collects and processes Personal Data to the extent necessary to perform the Contract, to fulfil legal obligations and in order to comply with the requirements of governmental agencies, authorities and/ or regulators. In addition bpi may process certain Personal Data for the purposes of legitimate interests as permitted by applicable laws. bpi's Privacy Policy (available at www.rpc-bpi.com) sets out the types of Personal Data that bpi may collect and how it is used.
- 22.3 Both bpi and the Buyer shall comply with the applicable requirements of data and privacy protection laws, including but not limited to the EU General Data Protection Regulation (2016/679).
- 22.4 Where bpi processes the Personal Data as provided above,
- it does so as a data controller. Without prejudice to the generality of Condition 22.3 the Buyer shall ensure that it has all necessary consents and notices in place to enable the lawful provision of Personal Data by it or its agents for the purposes of the Contract. Any Personal Data supplied by bpi about its employees and/ or any other individuals may only be used for the purposes for which it is provided.
- 22.5 The Buyer agrees that bpi may share information as regards the Buyer's trading account balances from time to time with credit reference agencies.
23. **GENERAL**
- 23.1 Each right or remedy of bpi under the Contract is without prejudice to any other right or remedy of bpi whether under the Contract or not.
- 23.2 Failure or delay by bpi in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract or at law.
- 23.3 Any waiver by bpi of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 23.4 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 23.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
24. **COMMUNICATIONS**
- 24.1 All communications between bpi and the Buyer about the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first class post or sent by fax or email (although not SMS messaging):-
- (a) in the case of communications to bpi, to the address, fax number and/ or email address included on the Order Confirmation or otherwise notified to the Buyer by bpi; or
- (b) in the case of communications to the Buyer, to any known address, fax number and/ or email address of the Buyer, including any such address and/ or number set out in any document which forms part of the Contract or such other address, fax number and/ or email address as shall be notified in writing to bpi by the Buyer.
- 24.2 Communications shall be deemed to have been received:-
- (a) if sent by pre-paid first class post, two working days after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery;
- (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; or
- (d) if sent by email on a working day prior to 4.00 pm, at the time of receipt and otherwise on the next working day.
- Working day for the purposes of this Condition 24.2 shall mean a day on which the UK clearing banks are open for normal business in London and which is not a Saturday or Sunday.