1. INTERPRETATION

In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:

“Bespoke Goods” means any Goods which are made to measure, bespoke, or otherwise manufactured to a unique specification.

“Breach” means the United Kingdom ceasing to be a member state of the European Union.

“The person(s), firm or company whose order for the Goods or Services is accepted by the Company in accordance with these Terms and Conditions.”

“Company” means Sika Limited (Company number: 226822) whose registered office is located at Watchmead, Welwyn Garden City, Herts, AL7 1BQ.

“Confidential Information” means all information in respect of the business of the Company including, but not limited to, know-how, prices, other matters connected with the Goods or Services (which shall include any instructions or procedures, instruction manuals, user guides and other information which is supplied by the Company with the Goods or Services) and any other information of whatever nature which, if disclosed, will be liable to cause damage to the Company.

“Contract” any contract between the Company and the Buyer for the sale and purchase of the Goods or Services formed in accordance with Condition 2.

“Delivery Point” the place where delivery of the Goods is agreed to take place, as set out in the Company’s written acknowledgement of order.

“Final Inspection Certificate” a Certificate issued for the benefit of a third party at the completion of the Services.

“Goods” any goods which the Company supplies to the Buyer (including any of them or any part of them) under a Contract.

“Guarantee Period” the on-going period of guarantee provided to the Buyer under a Contract.

“Guarantee” any guarantee or Final Inspection Certificate for or related to the Goods in a form to be provided by the Company in favour of a third party nominated by the Buyer.

“Intellectual Property Rights” all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions.

“Services” any services which the Company performs for the Buyer under a Contract, which are ancillary to the supply of Goods.

“Service Point” the place at which the Services are to be performed, as set out in the Company’s written acknowledgement of order.

“Specific Delivery Requirement” any goods, which are required to be delivered by a type of vehicle specified by the Buyer.

“Terms and Conditions” the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Buyer and the Company.

“Trademark” the SARNAFIL trademark registered in the United Kingdom under trademark number 1046240.

“Working Day” any day other than Saturday or Sunday or a public bank holiday in England.

FORMATION AND INCORPORATION

Subject to any variation under Condition 14.5, the Contract will be upon these Terms and Conditions, to the exclusion of all other terms and conditions and all previous oral or written representations including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.

Each order or acceptance of a quotation for Goods or Services will be deemed to be an offer by the Buyer to purchase Goods or Services upon these Terms and Conditions. The Contract is formed when the Buyer receives confirmation that the order is accepted by the Company. Such confirmation may either be given orally or in writing. No contract will come into existence until such confirmation has been given by the Company.

The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of the Buyer’s acceptance of these Terms and Conditions.

Subject to Condition 6.5, the Buyer may not cancel the Contract. The Company may cancel the Contract at any time prior to delivery of the Goods or commencement of the performance of the Services.

DESCRIPTION OF THE GOODS AND SERVICES

The description of the Goods will be set out in the Company’s price list. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods represented by them and they will not form part of the Contract and this is not a sale by sample.

The Company may make any change to the specification, design, materials or finish of the Goods which are:

- required to conform with any applicable safety, statutory or regulatory requirement; or
- do not materially affect their quality or performance.

The Company will only perform Services which are ancillary to, or relating to, Goods provided under a Contract.

The Company shall use all reasonable endeavours to perform the Services to the standard required for the issue of a Final Inspection Certificate for the Goods.

The Company may invoice the Buyer for the Goods or Services upon these Terms and Conditions, and this is not a sale by sample. Any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract, will only be valid if accepted in writing by the Company, and any other rights under the Contract: that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at a combined rate of the Bank of England base rate from time to time and the rate provided by the Late Payment of Commercial Debts ( Interest) Act 1998 as amended from time to time, and the Company will be entitled to suspend deliveries of the Goods or performance of the Services until the outstanding amount has been received.

The Company reserves the right to recover any sum, resulting from costs incurred from legal proceedings to recover any sum due under the Contract.

Any invoice queries must be communicated to the Company within 10 (ten) Working Days of receipt of the invoice by the Buyer.

INSTALMENTS

The Company may deliver the Goods, or perform Services, by separate instalments. Each instalment will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Contract or instalment unless otherwise notified by the Company. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract.

DELIVERY OF GOODS

Delivery of the Goods within the UK mainland will be CPT Delivery Point INCOTERMS 2010 (save that carriage may be charged to the Buyer in accordance with Conditions 6.4 and/or 6.5). Delivery of the Goods to Northern Ireland, the Scottish Isles, the Channel Islands or the Isle of Man will be FOB Delivery Point INCOTERMS 2010.

Delivery of the Goods outside the UK will be made FAS Delivery Point INCOTERMS 2010, except that risk shall pass to the Buyer at the time that the Goods leave the Company’s premises.

The Goods will be delivered at any time of day. At the sole discretion of the Company, overnight deliveries or deliveries at specified times may be agreed in certain circumstances. Notwithstanding the Company’s premises. 1, such deliveries shall be subject to an additional charge being raised by the Company. If the Buyer fails to take delivery, or provide any necessary
risks to the reasonable satisfaction of the Company, and will whenever requested by the Company produce a copy of the invoice so passed to it.

7.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

7.4.1 any sale will be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Company accordingly; and

7.4.2 any such sale will be a sale of the Company's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.

7.5 The Buyer's right to possession of the Goods will terminate immediately if any of the circumstances set out in Condition 11.1 occur.

7.6 The Company will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Company.

7.7 The Buyer grants the Company, its agents and employees the right at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover the Goods. The Buyer is not and shall not be entitled to take, or attempt to take, any action against the Company for recovery of the Goods.

7.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all the goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buy or, in any event, no later than 12 months from the date of delivery; where a guarantee has been issued, and has been breached, the Buyer will have no right to possession of the Goods, or of any product incorporating any of the Goods, or on the part of the Company's employees, agents or sub-contractors.

7.9 Except as set out in Conditions 6.5 and 8.1 to 8.5, the Company's liability excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might be construed in favour of the Buyer.

8.5 Each of the Company's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in Conditions 6.5 and 8.3 to 8.6 in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word Company wherever it appears in those conditions.
the Contract which is not capable of remedy.

11.1.2 becomes bankrupt, insolvent, makes any composition with his creditors, has a receiver appointed under the Mental Health Act 1983 or dies;

11.1.3 has any distress, execution or other process levied or enforced on any of its property;

11.1.4 ceases to trade or appears in the reasonable opinion of the Company likely or is threatening to cease trade;

or

11.1.5 the equivalent of any of the above occurs to the Buyer under the jurisdiction to which the Buyer is subject.

11.2 The Company may terminate the Contract in accordance with Condition 14.14.

11.3 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liability of either the Buyer or the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination, which shall include but shall not be limited to, the Buyer’s obligations in relation to any Guarantee.

12. INTELLECTUAL PROPERTY

12.1 No right or licence is granted to the Buyer in respect of the existing Intellectual Property Rights of the Company, except the right to use, or re-sell the Goods in the Buyer’s ordinary course of business.

12.2 All Intellectual Property Rights in or arising out of or in connection with the performance of Services shall be owned by the Company.

12.3 The Buyer will not without the Company’s prior consent allow the Trademark or any other trade marks of the Company or other words or marks applied to the Goods to be obliterated, obscured or omitted nor will he add any additional marks or words.

13. DISTRIBUTION

13.1 If the Buyer purchases the Goods and resells them then the Company shall have no liability for or shall any indemnity from the Company to the Buyer in these terms apply to any liability of the Buyer to the extent that such liability would not have existed had the Buyer sold the goods upon terms no less favourable than these terms and conditions.

14. GENERAL

14.1 Time for performance of all obligations of the Buyer is of the essence. Time for performance of all obligations of the Company is not of the essence.

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

14.3 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective, without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.

14.4 No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.

14.5 Save as set out in the Contract and Condition 8.1.5, these Terms and Conditions may only be varied or amended in writing and signed by a senior manager of the Company.

14.6 The Company may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.

14.7 The Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company’s prior written consent.

14.8 The Contract contains all the terms with which the Company and the Buyer have agreed in relation to the Goods and/or Services and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods and/or Services. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition 14.8 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

14.9 Save as set out in Condition 8.7 the parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

14.10 Any notice in connection with the Contract will be in writing addressed to the other party at its registered office, or principal place of business and will be delivered by hand, or first class or special delivery post or Airmail. The notice will be deemed to have been duly served, if delivered by hand, when left at the proper address, or if made by pre-paid, first class post or special delivery post, 48 hours after being posted or in the case of Airmail, 14 days after being posted.

14.11 The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law. The English courts will have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with the Contract. The parties agree to submit to that jurisdiction.

14.12 Where Part II of the Housing Grants, Construction and Regeneration Act 1996 applies, either party may refer any dispute or difference arising under this Agreement to adjudication. The adjudication procedures and the agreement for the appointment of an adjudicator shall be set out in the Model Adjudication Procedure published by the Construction Industry Council current at the date of reference. The nominating body shall be the Technology and Construction Solicitors’ Association or any successor organisation.

14.13 The Buyer will keep confidential any and all Confidential Information that it may acquire. The Buyer will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Buyer will ensure that its officers and employees comply with the provisions of this Condition 14.13. The obligations on the Buyer set out in this Condition will not apply to any information which is publicly available or becomes publicly available through no act or omission of the Buyer or if the Buyer is required to disclose by order of a court of competent jurisdiction.

14.14 Where a Brexit Trigger Event occurs (as defined below) and the Company gives notice to the Buyer of the same:

14.14.1 the Company shall not be liable to the Buyer for any failure or delay or for the consequences of any failure or delay in performance of the Contract where there is a Brexit Trigger Event (and the notice shall have effect from its date);

14.14.2 the Company may require the Buyer to negotiate in good faith an amendment to the Contract to alleviate the Brexit Trigger Event; and if no such amendment is made to the Contract within 7 days from notice given by the Company, the Company may terminate the Contract by giving Buyer not less than 21 days written notice.

14.15 For the avoidance of doubt the rights afforded by this clause 14.14 are without prejudice to the entitlement of the Company to exercise its rights pursuant to Condition 2.5, and the Company may cancel the Contract at any time prior to delivery of the Goods or commencement of the performance of the Services, for any reason.

14.16 “Brexit Trigger Event” means any of the following events occurring at any time on or after Brexit:

14.16.1 an adverse impact on the Company’s ability to perform the Contract in accordance with its terms and the law (and the Company shall determine in its absolute discretion whether such an adverse impact has occurred);

14.16.2 an increase in the costs incurred by the Company performing the Contract since the price for the Goods was last agreed;

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