

OUR TERMS OF BUSINESS

QUALITY

We aim to make sure your experience purchasing and enjoying our products and receiving our services is exceptional. In the unlikely event that the products or services we provide to you do not meet the standards you expect, these terms set out the standard the goods and services should achieve and your rights if they do not do so.

SUPPORT

If you have any queries regarding these terms, or any support or technical queries, please contact our support team:

Telephone: 0800 124 4143

Email: support@barrisolwelch.com

Write: Technical Support, Barrisol Welch, New Road, Somerford Booths, Congleton, Cheshire CW12 2JU

GUARANTEE

As Barrisol Welch is a fully authorised Barrisol supplier, all Barrisol stretch panels are provided with a guarantee from Barrisol (Barrisol Normalu SAS). A copy of the terms of the guarantee is available upon request. Your guarantee certificate will be provided upon conclusion of the works, once the full price has been paid.

Your attention is particularly drawn to the provisions of clause 13, which limits our liability to you.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Barrisol Welch: Welch Services Group Limited, trading as Barrisol Welch, a company registered in England and Wales with company number 04474196 whose registered office is at New Road, Somerford Booths, Congleton, Cheshire CW12 2JU.

Barrisol Welch Materials: has the meaning set out in clause 8.2(i).

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

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.7.

Contract: the contract between Barrisol Welch and the Customer for the supply of Goods or Services or both in accordance with these Conditions.

Customer: the person or firm who purchases the Goods or Services or both from Barrisol Welch.

Defect: any Goods do not comply with the warranty at clause 3.3 or any Services do not comply with the warranty at clause 7.1.

Event Beyond Our Control: has the meaning given to it in clause 15.1.

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

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and Barrisol Welch.

Insolvent: a person to whom one or more of the following applies:

- the person suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the person (being a company) other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or a solvent reconstruction;
- the person (being an individual) is the subject of a bankruptcy petition or order;
- an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the person (being a company);
- another person becomes entitled to appoint a receiver over the assets of the person or a receiver is appointed over the assets of the person;
- any event occurs, or proceeding is taken, with respect to the person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause (a) to clause (e) (inclusive); or
- the person suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.

Installation Date: has the meaning given to it in clause 8.1.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Goods or Services or both, as set out in the Customer's purchase order form, or the Customer's written acceptance of Barrisol Welch's quotation, as the case may be.

Service Specification: the description or specification for the Services provided in writing by Barrisol Welch to the Customer.

Services: the services supplied by Barrisol Welch to the Customer as set out in the Service Specification.

Site: the location where the Services are to be provided.

1.2 Construction. In these Conditions, the following rules apply:

- a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- a reference to a party includes its successors or permitted assigns;
- a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- a reference to writing or written includes e-mails.

2. BASIS OF CONTRACT

- The Order constitutes an offer by the Customer to purchase Goods or Services or both in accordance with these Conditions.
- The Order shall only be deemed to be accepted when Barrisol Welch issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).
- The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Barrisol Welch which is not set out in the Contract.
- Any samples, drawings, descriptive matter or advertising issued by Barrisol Welch and any descriptions of the Goods or illustrations or descriptions of the Services contained in Barrisol Welch's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of any Services or Goods described in them. They shall not form part of the Contract or have any contractual force.
- These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- Any quotation given by Barrisol Welch shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

- The Goods are described in the Goods Specification.
- Barrisol Welch reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.
- Barrisol Welch warrants that on delivery the Goods shall:
 - conform in all material respects with their description and the Goods Specification;
 - be free from material defects in design, material and workmanship;
 - be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - be fit for any purpose held out by Barrisol Welch in writing.

- 3.4 The Customer must comply with any oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods provided by the manufacturer or Barrisol Welch or (if there are none) good trade practice. In the event of any conflict between any instructions the Customer must contact Barrisol Welch in writing.

4. DELIVERY OF GOODS

- 4.1 Where a delivery location is specified in the Order (or otherwise agreed between the parties):
- (a) Barrisol Welch shall deliver the Goods to the location set out in the Order (or such other location as the parties may agree) at any time after Barrisol Welch notifies the Customer that the Goods are ready.
 - (b) Delivery is completed on the completion of unloading of the Goods at the agreed delivery location.
 - (c) The Customer must provide adequate labour and facilities at the delivery location to unload the Goods without undue delay and sign for their receipt.
 - (d) Except where caused by an Event Beyond Our Control or Barrisol Welch's failure to comply with its obligations under the Contract, if delivery is delayed or cannot be carried out then Barrisol Welch will charge the Customer for any costs incurred and delivery of the Goods shall be deemed to have been completed.
- 4.2 Where no delivery location is specified in the Order:
- (a) Barrisol Welch may require the Customer to collect the Goods from such location as Barrisol Welch notifies to the Customer and such collection must take place within 3 Business Days from the later of (i) Barrisol Welch notifying the Customer of the collection location and (ii) Barrisol Welch notifying the Customer that the Goods are ready for collection.
 - (b) Delivery is completed on the later of the Customer collecting the Goods or delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Barrisol Welch notified the Customer that the Goods were ready.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Barrisol Welch shall not be liable for any delay in delivery of the Goods that is caused by an Event Beyond Our Control or the Customer's failure to provide Barrisol Welch with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If Barrisol Welch fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Barrisol Welch shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by an Event Beyond Our Control or the Customer's failure to provide Barrisol Welch with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.5 If the Customer fails to accept or take delivery of the Goods within 3 Business Days of Barrisol Welch notifying the Customer that the Goods are ready, then except where such failure or delay is caused by an Event Beyond Our Control or by Barrisol Welch's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Barrisol Welch notified the Customer that the Goods were ready; and
 - (b) Barrisol Welch shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If 5 Business Days after Barrisol Welch notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Barrisol Welch may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.7 The Customer shall not be entitled to reject the Goods if Barrisol Welch delivers up to and including 10 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.8 Barrisol Welch may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS AND SERVICES

- 5.1 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to Barrisol Welch of a Defect within a reasonable time of discovery of it; and
 - (b) Barrisol Welch is given a reasonable opportunity of examining such Defect; and
 - (c) the Customer (if asked to do so by Barrisol Welch) returns any Goods to Barrisol Welch's place of business at the Customer's cost, clause 5.2 shall apply.
- 5.2 Barrisol Welch shall, at its option:
- (a) With regard to any defective Services, Barrisol Welch shall repair any defective Services or refund the reasonable remedial cost in respect of the defective Services. Barrisol Welch will not be held liable to provide any high level access to rectify these defects. Barrisol Welch will provide steps to reach up to 3 metres only in height. For any height above this, high level access will need to be provided by the client or main contractor.
 - (b) With regard to any defective Goods, Barrisol Welch shall either repair or replace any defective Goods, or refund the price of the defective Goods in full. Barrisol Welch will also refund the cost of returning the Goods.
- 5.3 Barrisol Welch shall not be liable for any Defect if:
- (a) the Customer makes any further use of any Goods after giving a notice in accordance with clause 5.1;
 - (b) the Defect arises because the Customer failed to comply with clause 1.1;
 - (c) the Defect arises as a result of Barrisol Welch following any drawing, design or Goods Specification supplied by the Customer;
 - (d) the Customer alters or repairs the Defect without the written consent of Barrisol Welch

- (e) the Defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the Goods or Services differ from their description or the Goods Specification or Services Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

- 5.4 Except as provided in this clause 5, Barrisol Welch shall have no liability to the Customer in respect of the Defect.

- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods or Services supplied by Barrisol Welch under clause 5.1.

- 5.6 The following will not be treated as Defects and Barrisol Welch shall have no liability for:

- (a) LEDs may have slight colour variations and such variations will not be a Defect provided the LEDs reasonably comply with the colour (if any) described in the Order.
- (b) Due to the way in which LEDs are manufactured, it is to be expected that some LEDs will not work, or will fail within a short time. The failure of LEDs will not be a Defect provided 95% of the LEDs operate correctly one year from the date of installation. If the Customer requires a warranty that all, or a higher percentage, of the LEDs will function over a longer period, it should contact Barrisol Welch.
- (c) Due to the manner in which the panels are manufactured, stretch panels may include one or more welded seams. Barrisol Welch cannot guarantee the location, direction or appearance of any seam and such shall not be a Defect.
- (d) Stretch panels should not be installed in sheets exceeding 50m² in size and Barrisol Welch will not be liable for any issues arising with sheets exceeding 50m². Additionally, the customer must note that sheets exceeding 50m² will not have any manufacturer's warranty.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery. Where Goods are delivered to Site, the Goods are at the Customer's risk from delivery to Site.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
- (a) Barrisol Welch receives payment in full (in cash or cleared funds) for the Goods and any other goods that Barrisol Welch has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Barrisol Welch's behalf from the date of delivery;
 - (b) notify Barrisol Welch immediately if it becomes subject to any of the events listed in clause 14.1(b) or clause 14.1(c); and
 - (c) give Barrisol Welch such information relating to the Goods as Barrisol Welch may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Barrisol Welch receives payment for the Goods. However, if the Customer resells the Goods before that time: (i) it does so as principal and not as Barrisol Welch's agent; and (ii) title to the Goods shall pass from Barrisol Welch to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(c), then, without limiting any other right or remedy Barrisol Welch may have:
- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) Barrisol Welch may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. SUPPLY OF SERVICES

- 7.1 Barrisol Welch warrants to the Customer that:
- (a) the Services will be provided using reasonable care and skill; and
 - (b) the Services will be provided in accordance with the Service Specification in all material respects.
- 7.2 The price for the Services does not include any costs Barrisol Welch may incur dealing with any unexpected problems. The price set out in the quotation is based on a visual inspection only. If following the date of the quotation any problem is discovered which could not reasonably have been foreseen (including defects with existing wiring, the use of unusual building materials, difficult access or structural issues) the additional work to deal with the problem will be charged in accordance with clause 10.3.
- 7.3 The Customer must carry out all investigations and obtain all reports (including a structural engineer's report where necessary) to ensure that the Services can properly be carried out as set out in the Service Specification.
- 7.4 The Services shall not include the following, unless otherwise specified in the Order or agreed in writing:
- (a) working outside our normal working hours set out in clause 10.3(b).
 - (b) any design or structural calculations.
 - (c) temporary site services.
 - (d) any building or electrical work.
 - (e) cleaning the Site.
 - (f) stripping out or removing and disposing of any waste.
 - (g) the production of any building log books.
 - (h) providing any collateral warranties.
 - (i) maintenance or servicing (either during or outside the warranty period).
 - (j) working at a height greater than 3 metres.
 - (k) attending site or project meetings.
 - (l) Barrisol Welch being the Principal Designer or Principal Contractor for the purposes of the Construction (Design and Management) Regulations 2015.

- 7.5 Barrisol Welch shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.6 Barrisol Welch shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Barrisol Welch shall notify the Customer in any such event.
- 7.7 The Customer must extend any performance dates by a fair and reasonable amount if:
- (a) Barrisol Welch has to spend extra time on the Services because of any change requested by the Customer;
 - (b) Barrisol Welch is delayed by the Customer's instructions or lack of instructions regarding the Services.
 - (c) Barrisol Welch cannot finish the Services on time for reasons beyond its control, including any delay caused by the Customer, and weather conditions which delay the carrying out of the Services.
 - (d) Barrisol Welch suspends carrying out the services pursuant to clause 14.2(a).
 - (e) the Services are obstructed by any matter Barrisol Welch does not control.
- 7.8 Barrisol Welch will be entitled to all costs which it incurs as a result of any performance dates being extended because of any delay caused by the Customer.
- 7.9 Where Barrisol Welch has been notified of any Installation Date, the Customer will be responsible for all costs incurred by Barrisol Welch if either:
- (a) the Installation Date is cancelled with less than 10 Business Days' written notice, or
 - (b) all or part of the necessary works cannot be carried out on the Installation Date due to the Customer breaching the Contract.
- 7.10 On completion of the Services the Customer must carefully inspect them to see whether they have been properly performed. If a representative of the Customer signs Barrisol Welch's acceptance form such signature shall be deemed to be conclusive evidence that Barrisol Welch had properly performed its obligations in accordance with the Contract.

8. CUSTOMER'S OBLIGATIONS

- 8.1 Where the Services include the installation of any Goods by Barrisol Welch, if the Order does not state the date any Goods are to be installed at the Site by Barrisol Welch (Installation Date) the Customer must provide Barrisol Welch with at least 20 Business Days' written notice of the Installation Date.
- 8.2 The Customer must:
- (a) Co-operate with Barrisol Welch in all matters relating to the Services.
 - (b) Ensure that the terms of the Order and (if submitted by the Customer) the Service Specification and the Goods Specification are complete and accurate, meet all legal requirements (including planning and building regulations) and are fit for the intended purpose.
 - (c) Obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the Installation Date.
 - (d) Inform Barrisol Welch of all Site requirements, including access and health and safety requirements.
 - (e) Prepare the Site for the supply of the Services, including (where applicable) ensuring that:
 - (i) all fixing points for the Goods are fit for purpose and will not require any modification by Barrisol Welch;
 - (ii) the working areas are clear and unobstructed throughout; and
 - (iii) the Site complies with the site suitability requirements for any Goods or Services, which are available on request from Barrisol Welch.
 - (f) Provide Barrisol Welch, its employees, agents, consultants and subcontractors, with (i) access to and parking at the Site to allow for any Goods to be delivered and installed (ii) other facilities as reasonably required by Barrisol Welch to provide the Services (including access to welfare facilities, storage, lighting and a power supply at no cost to Barrisol Welch).
 - (g) Provide Barrisol Welch with such information (accurate in all material respects), materials and access equipment as Barrisol Welch may reasonably require to supply the Services.
 - (h) Clean the Site after the Services have been completed.
 - (i) Keep and maintain all materials, equipment, documents and other property of Barrisol Welch (Barrisol Welch Materials) at the Site in safe custody at its own risk, maintain Barrisol Welch Materials in good condition until returned to Barrisol Welch, and not dispose of or use Barrisol Welch Materials other than in accordance with Barrisol Welch's written instructions or authorisation. All Barrisol Welch Materials are the exclusive property of Barrisol Welch.
- 8.3 Where the Services include the installation of stretch panels:
- (a) The panels are supplied with a perimeter track. The Customer must provide a stable structure of the shape required, capable of withstanding a maximum sheet tension of up to 15kg per linear metre to which the track can be secured.
 - (b) Additionally, to avoid the panels deteriorating, they must be kept at 12° Celsius or above. The Customer must keep the panels at 12° from the time they are delivered to site onwards.
 - (c) Stretch panels must be installed at 40° Celsius, and Barrisol Welch will heat the space to around 40° Celsius during the installation work. The Customer must ensure that the Site will not be adversely affected by a temperature of around 40° Celsius. The Customer must ensure that any materials or surfaces that may be damaged by a temperature of around 40° Celsius are removed or suitably protected prior to the installation works commencing and that any fire alarm, intruder alarm, sprinkler system and any other system which may be adversely affected by a temperature of around 40° Celsius is isolated and protected.
 - (d) To avoid the panels being damaged by subsequent work the Customer must ensure that all other prior works are carried out before the panels are installed.

9. CUSTOMER DEFAULT

If Barrisol Welch's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- 9.1 Barrisol Welch shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Barrisol Welch's performance of any of its obligations;
- 9.2 Barrisol Welch shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Barrisol Welch's failure or delay to perform any of its obligations as set out in this clause 9; and
- 9.3 The Customer shall reimburse Barrisol Welch on written demand for any costs or losses sustained or incurred by Barrisol Welch arising directly or indirectly from the Customer Default.

10. CHARGES AND PAYMENT

- 10.1 The price for the Goods and price for the Services shall be the price set out in the Order. Any price for Services is an estimate which assumes the Customer has complied with its obligations under these Conditions and ideal installation conditions and excludes any allowance for attendance at site meetings. Any additional Goods will be charged in accordance with clause 10.2 and any additional Services will be charged in accordance with clause 10.3.
- 10.2 If no price is quoted for the Goods in the Order, the price of the Goods shall be as set out in Barrisol Welch's published price list as at the date of delivery. Unless otherwise stated in the Order, the price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 10.3 If no price for the Services is set out in the Order, the Services shall be charged on a time and materials basis as follows:
- (a) the charges shall be calculated in accordance with Barrisol Welch's standard daily fee rates, as set out in Barrisol Welch's price list from time to time;
 - (b) Barrisol Welch's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Business Days (allowing an hour for lunch);
 - (c) Barrisol Welch shall be entitled to charge an overtime rate of 200 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 10.3(b); and
 - (d) Barrisol Welch shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Barrisol Welch engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Barrisol Welch for the performance of the Services, and for the cost of any materials.
- 10.4 Barrisol Welch reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Barrisol Welch that is due to: (i) any factor beyond the control of Barrisol Welch (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Barrisol Welch adequate or accurate information or instructions in respect of the Goods.
- 10.5 If the Customer requests that Barrisol Welch investigate an alleged Defect and no Defect is found, then the Customer must pay Barrisol Welch for such investigatory work and any remedial work carried out by Barrisol Welch the price for which shall be calculated in accordance with clause 10.3.
- 10.6 In respect of Goods, the Customer must pay 50% of the price on placing the Order, a further 30% of the price prior to Barrisol Welch ordering the sheet material from the manufacturer, with the remaining 20% payable on delivery. In respect of Services, unless the Order states otherwise, Barrisol Welch shall invoice the Customer for the full price of the Services 14 days before the Services are due to start.
- 10.7 The Customer shall pay each invoice submitted by Barrisol Welch: (i) immediately upon receipt of the invoice; and (ii) in full and in cleared funds to a bank account nominated in writing by Barrisol Welch, and (iii) time for payment shall be of the essence of the Contract.
- 10.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Barrisol Welch to the Customer, the Customer shall, on receipt of a valid VAT invoice from Barrisol Welch, pay to Barrisol Welch such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 10.9 If the Customer fails to make any payment due to Barrisol Welch under the Contract by the date 14 days after the date for payment, then the Customer shall pay interest on the overdue amount at the rate of 12% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Barrisol Welch may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Barrisol Welch to the Customer.
- 10.11 The Customer must pay to Barrisol Welch on demand and on an indemnity basis all such legal costs or expenses which Barrisol Welch may reasonably incur from time to time in connection with:
- (a) enforcing the payment of any sum due to it under the Contract; or
 - (b) successfully defending a claim brought by the Customer relating to the Contract.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Barrisol Welch.
- 11.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on Barrisol Welch obtaining a written licence from the relevant licensor on such terms as will entitle Barrisol Welch to license such rights to the Customer.

12. INDEMNITY

- 12.1 To the extent that:
- (a) the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer; or
 - (b) the Services are to be supplied in accordance with a Service Specification supplied by the Customer,
- the Customer shall indemnify Barrisol Welch against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Barrisol Welch in connection with any claim made against Barrisol Welch for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Barrisol Welch's use of the relevant specification.
- 12.2 The Customer is liable for and hereby indemnifies Barrisol Welch against any expense liability loss claim or proceedings whatsoever in respect of personal injury or death of any person arising out of or in the course of or caused by the carrying out of the Services at the Site except to the extent that the same is due to any act or neglect of Barrisol Welch or Barrisol Welch's employees or agents.
- 12.3 This clause 12 shall survive termination of the Contract.

13. LIMITATION OF LIABILITY**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 13.1 Nothing in these Conditions shall limit or exclude Barrisol Welch's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - (e) defective products under the Consumer Protection Act 1987.
- 13.2 Subject to clause 13.1:
- (a) except as provided in clause 5, Barrisol Welch shall have no liability to the Customer in respect of any breach of clause 3.3 or clause 7.1;
 - (b) Barrisol Welch shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (c) Barrisol Welch's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £500,000. If the Customer requires greater protection, it must either arrange its own insurance or contact Barrisol Welch in writing and Barrisol Welch will investigate whether additional insurance can be arranged at the Customer's cost; and
- 13.3 In respect of any of the Goods the Customer may receive the benefit of a guarantee or warranty provided by the manufacturer of those Goods (Guarantee). Subject to clause 13.1, where the benefit of such a Guarantee is transferred to the Customer then Barrisol Welch shall have no further liability to the Customer in respect of those Goods (unless the manufacturer is Insolvent, in which case Barrisol Welch will remain liable under the Contract).
- 13.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.5 This clause 13 shall survive termination of the Contract.

14. TERMINATION

- 14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 5 Business Days after receipt of notice in writing to do so;
 - (b) the other party is insolvent; or
 - (c) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 14.2 Without limiting its other rights or remedies, Barrisol Welch may:
- (a) suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Barrisol Welch if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes Insolvent, or Barrisol Welch reasonably believes that the Customer is about to become Insolvent; and
 - (b) terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 14.3 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to Barrisol Welch all of Barrisol Welch's outstanding unpaid invoices and interest and, in respect of Services supplied but for

which no invoice has yet been submitted, Barrisol Welch shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- (b) the Customer shall return all Barrisol Welch Materials. If the Customer fails to do so, then Barrisol Welch may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. EVENTS BEYOND OUR CONTROL

- 15.1 For the purposes of this Contract, an Event Beyond Our Control means an event beyond the reasonable control of Barrisol Welch including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Barrisol Welch or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15.2 Barrisol Welch shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of an Event Beyond Our Control.
- 15.3 If the Event Beyond Our Control prevents Barrisol Welch from providing any of the Services or Goods for more than 6 weeks, Barrisol Welch shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

16. GENERAL

- 16.1 Assignment and other dealings.
- (a) Barrisol Welch may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
 - (b) The Customer shall not, without the prior written consent of Barrisol Welch, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 16.2 Notices.
- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, or e-mail.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
 - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action
- 16.3 Severance.
- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
 - (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 16.4 Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.6 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 16.7 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by Barrisol Welch.
- 16.8 Governing law. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 16.9 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims). END