
MAWBY & KING LTD

SINCE 1933

Swan Lake Glassworks, Upperton Road, Leicester, LE2 7AY
Tel: +44 (0)116 204 6000 Website: www.mawbyandking.co.uk

CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these Conditions:

BUSINESS DAY means a day other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.

BUYER means the person or firm who purchases the Goods from Mawby and King.

GOODS means the goods (including any instalment of the goods or any parts for them which Mawby and King is to supply in accordance with these Conditions.

Mawby and King means Mawby and King Limited of Swan Lake Glassworks, Upperton Road, Leicester, LE2 7AY (Company number 00332183).

CONDITIONS means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Mawby and King.

CONTRACT means the contract for the purchase and sale of the Goods.

INTELLECTUAL PROPERTY RIGHTS (IPR) mean all copyrights, patents, design rights, trade marks, trade secrets, know-how, database rights, moral rights and other rights in the nature of intellectual property rights (where registered or unregistered) and all applications for the same, anywhere in the world.

ORDER the Buyer's order for the Goods, as set out in the Buyer's purchase order form or overleaf or in the Buyer's written acceptance of the Mawby and King's quotation or in the Buyer's purchase order form, the Buyer's written acceptance of the Mawby and King's quotation, or overleaf, as the case may be].

WRITING includes email.

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2. BASIS OF THE SALE

- 2.1 Mawby and King shall sell, and the Buyer shall purchase the Goods in accordance with these conditions, which shall govern the contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing.
- 2.2 Mawby and King's employees or agents are not authorized to make any representations concerning the Goods unless confirmed by Mawby and King in Writing. In entering into the Contract, the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.
- 2.3 Any advice or recommendation given by Mawby and King or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by Mawby and King is followed or acted upon entirely at the Buyer's own risk, and accordingly Mawby and King shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.4 Any samples, drawings, descriptive matter, or advertising produced by Mawby and King and any descriptions or illustrations contained in Mawby and King's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 Any typographical, clerical, or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Mawby and King shall be subject to correction without any liability on the part of Mawby and King.

3. ORDERS AND SPECIFICATIONS

- 3.1 A quotation for the Goods given by Mawby and King shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue, subject to the right of Mawby and King to withdraw or modify the terms of such quotation.
- 3.2 The placing of any Order, whether or not following Mawby and King's quotation shall not be binding on Mawby and King unless or until it is confirmed by Mawby and King in Writing. In the case of quotations given verbally by Mawby and King to the Buyer or Orders given verbally by the Buyer to Mawby and King, whether by telephone or otherwise, the record made by Mawby and King of such quotation or Order shall be conclusive and binding as to

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the quantity, quality and specifications of the Goods, the price of the Goods, the delivery point, and the delivery date.

- 3.3 The Buyer shall be responsible to Mawby and King for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer, and for giving Mawby and King any necessary information relating to the Goods within a sufficient time to enable Mawby and King to perform the Contract in accordance with its terms.
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by Mawby and King in accordance with a specification submitted by the Buyer, the Buyer shall indemnify Mawby and King and keep it indemnified against all loss, damage, costs and expenses awarded against or incurred by Mawby and King in connection with or paid or agreed to be paid by Mawby and King in settlement of any claim for infringement of any industrial or Intellectual Property Rights of any other person which results from Mawby and King's use of the Buyer's specification.
- 3.5 Mawby and King reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to Mawby and King's specification, which do not materially affect their quality or performance.
- 3.6 If the Goods are to be manufactured or any process is to be applied to the Goods by Mawby and King which incorporates any IPR created by Mawby and King (whether created before or as a result of this contract), the Buyer agrees that all such IPR vests in Mawby and King and to the extent that the Buyer has any interest in such rights, it hereby assigned to Mawby and King all such IPR (both existing and future) with full title guarantee. To the extent that any of the rights assigned by the Buyer under this clause 3.6 are not wholly or validly assigned, the Buyer agrees to hold them upon a bare trust for the full and exclusive benefit of Mawby and King and at the request and cost of Mawby and King to:
- (a) execute any further documents and/or deeds and do any such things as Mawby and King may require to enable Mawby and King to secure the delivery of information and the benefit of the rights assigned or held in trust in accordance with this clause 3.6; and/or
 - (b) take such action as Mawby and King may reasonable require to assist Mawby and King in bringing or defending any proceedings relating to such IPR.
- 3.7 No order which has been accepted by Mawby and King may be cancelled by the Buyer except with the agreement in Writing of Mawby and King and subject to the Buyer indemnifying

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Mawby and King in full against all loss (including loss of profit), costs (including the cost of all labour and materials used or acquired), damages, charges and expenses incurred by Mawby and King as a result of such cancellation.

4. PRICE OF THE GOODS

- 4.1 The prices of the Goods shall be those as stated in Mawby and King's quotation, or as notified to the Buyer upon Mawby and King's acceptance of the Buyer's Order. If no such price is quoted or mentioned in Mawby and King's acceptance of the Order, then the price for the Goods shall be prevailing at the time of the quotation or acceptance of the Order as the case may be.
- 4.2 Mawby and King reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Mawby and King which is due to any factor beyond the control of Mawby and King (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Mawby and King adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation or any Order (if accepted by Mawby and King) and unless otherwise agreed in Writing between the Buyer and Mawby and King, all prices are given by Mawby and King on an ex works basis, and where Mawby and King agrees to deliver the Goods otherwise than at Mawby and King's premises, the Buyer shall be liable to pay Mawby and King's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any amounts in respect of value added tax (VAT), which the Buyer shall additionally be liable to pay to Mawby and King at the prevailing rate.

5. TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in Writing between the Buyer and Mawby and King, Mawby and King shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event Mawby and King shall be entitled to invoice the Buyer for the price at any time after Mawby and King has notified the

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Buyer that the Goods are ready for collection or (as the case may be) Mawby and King has tendered delivery of the Goods.

- 5.2 The Buyer shall pay the price of the Goods on the last working day of the calendar month following the date of delivery of the Goods or the date upon which Mawby and King notifies the Buyer that the Goods are ready for collection as the case may be and Mawby and King shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The Buyer shall pay each invoice in full and in cleared funds to a bank account nominated in Writing by Mawby and King, and time for payment shall be the essence of the Contract.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Mawby and King, Mawby and King shall be entitled to:
- (a) cancel the Contract or suspend any further deliveries to the Buyer;
 - (b) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and Mawby and King) as Mawby and King may think fit (notwithstanding any purported appropriation by the Buyer; and
 - (c) charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate. Interest under this clause 5.3 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%..

6. DELIVERY

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at Mawby and King's premises at any time after Mawby and King has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by Mawby and King, by Mawby and King delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and Mawby and King shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by Mawby and King in writing. The Goods may be delivered by Mawby and King in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

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- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Mawby and King to deliver any one or more of the instalments in accordance with these Conditions or any claims by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If Mawby and King fails to deliver the Goods (or any instalment) for any reason other than any cause beyond Mawby and King's reasonable control or the Buyer's fault, and Mawby and King is accordingly liable to the Buyer. Mawby and King's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give Mawby and King adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of Mawby and King's fault) then, without prejudice to any other right or remedy available to Mawby and King, 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 Mawby and King notified the Buyer that the Goods were ready. Mawby and King may:
- (a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Goods at the best price readily obtainable after taking into account all reasonable storage and selling expenses charge the Buyer for any such shortfall, all costs and expenses incurred.

7. RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- (a) in the case of Goods to be delivered at Mawby and King's premises, at the time when Mawby and King notifies the Buyer that the Goods are available for collection; or
 - (b) in the case of Goods to be delivered otherwise than at Mawby and King's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when Mawby and King has tendered delivery of the Goods;
 - (c) the unloading of glass subject to any Contract with Mawby and King shall be the responsibility of the Buyer;

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- (d) handling or working or transporting Buyer's own glass or other property is at Buyer's risk. Where Mawby and King are requested and agree to measure for supply of glass only, Mawby and King shall not be liable for any error in such measurement or shortage of quantity.

- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provisions of these Conditions, the property in the Goods shall not pass to the Buyer until Mawby and King has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by Mawby and King to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Mawby and King's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Mawby and King's property, but shall be entitled to resell or use the Goods in the ordinary course of business provided that if the Buyer does resell the Goods in circumstances when payment has not been made to Mawby and King, the Buyer shall place the proceeds of sale in a separate account and hold those proceeds on trust for Mawby and King.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), Mawby and King shall be entitled at any time to require the Buyer to deliver up the Goods to Mawby and King and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for an indebtedness any of the Goods which remain the property of Mawby and King, but if the Buyer does so all moneys owing by the Buyer to Mawby and King shall (without prejudice to any other right or remedy of Mawby and King) forthwith become due and payable.
- 7.6 In the event of the Goods (or any of them) being converted into a new product, whether or not such conversion involves the admixture of any other Goods or thing whatsoever and in whatever proportions, the conversion shall be deemed to have been affected on behalf of Mawby and King and Mawby and King shall have the full legal and beneficial ownership of the new products, but without accepting any liability whatsoever in respect of such converted Goods in relation to any third party, and the Buyer hereby indemnifies Mawby and King in relation thereto.

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8. QUALITY AND LIMITATION OF LIABILITY

- 8.1 Mawby and King warrants that on delivery, the Goods shall conform with their description and any applicable specification.
- 8.2 Mawby and King shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.
- 8.3 Mawby and King shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow Mawby and King's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Mawby and King's approval.
- 8.4 Mawby and King shall be under no liability whatsoever and howsoever caused if the total price for the Goods has not been paid by the due date for payment.
- 8.5 Mawby and King does not accept any liability for parts, materials or equipment not manufactured by Mawby and King, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Mawby and King.
- 8.6 Mawby and King shall be under no liability whatsoever and howsoever caused if the Goods (or any parts of them) are converted into or used by the Buyer in connection with or mixed with any other product.
- 8.7 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Consumer Rights Act (2015), all conditions or other terms implied by statute including the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 or common law are excluded to the fullest extent permitted by law from the Contract.
- 8.8 Where the Goods are sold to a consumer (as defined by the Consumer Rights Act (2015) the statutory rights of the Buyer are not affected by these Conditions.
- 8.9 Any claim by the Buyer which is based on any defects in the quality or condition of the Goods or their failure to correspond with specification must (whether or not delivery is refused by the Buyer) be notified to Mawby and King within 3 days from the date of delivery. If the Buyer fails to notify Mawby and King within this time, the Buyer shall not be entitled to reject the Goods and Mawby and King shall have no liability for such defects or failure and

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the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the contract.

- 8.10 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Mawby and King in accordance with these Conditions, Mawby and King shall be entitled to replace the Goods (or the part in question) free of charge or, at Mawby and King's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but Mawby and King shall have no further liability to the Buyer.
- 8.11 Subject to clause 8.11, Mawby and King shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses and other claims for compensations whatsoever (whether caused by the negligence of Mawby and King, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of Mawby and King under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 8.12 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987.
- 8.13 Except as provided in this clause 8, Mawby and King shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 8.1.
- 8.14 These Conditions shall apply to any repaired or replacement Goods supplied by the Mawby and King.

9. FORCE MAJEURE

- 9.1 Mawby and King shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Mawby and

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King's obligations in relation to the Goods, if the delay or failure was due to any cause beyond Mawby and King's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Mawby and King's reasonable control:

- (a) Act of God, explosion, flood, tempest, fire or accident;
- (b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- (d) import or export regulations or embargoes;
- (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Mawby and King or of a third party);
- (f) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (g) power failure or breakdown in machinery.

10. TERMINATION

- 10.1 Without limiting its other rights or remedies, Mawby and King may terminate the Contract with immediate effect by giving written notice to the Buyer if:
- 10.2 the Buyer commits a material breach of any term of any Contract under these Conditions and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
- 10.3 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 10.4 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.5 the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

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- 10.6 Without limiting its other rights or remedies, the Mawby and King may suspend provision of the Goods under the Contract or any other contract between the Buyer and Mawby and King if the Buyer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or Mawby and King reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 10.7 Without limiting its other rights or remedies, Mawby and King may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 10.8 On termination of the Contract for any reason the Buyer shall immediately pay to Mawby and King all of the Mawby and King's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Mawby and King shall submit an invoice, which shall be payable by the Buyer immediately on receipt.
- 10.9 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, 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.

Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. GENERAL

11.1 Assignment and other dealings.

- (a) Mawby and King may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Mawby and King.

11.2 Confidentiality.

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- (a) Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, including but not limited to any pricing related information, except as permitted by clause 11.2(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

11.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.5 Waiver.

- (a) A waiver of any right or remedy is only effective if given in Writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

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11.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.7 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case)[; or]
 - (ii) sent by email to the following addresses (or an address substituted in writing by the party to be served):

Mawby and King Ltd, Swan Lake Glass Works, Upperton Rd, Leicester. LE2 7AY.

Buyer: [ADDRESS]
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post next working day delivery service, at [9.00 am] on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11.8 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

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- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

11.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.