

CERATIZIT WNT LIMITED

Terms & Conditions for the Supply of Goods and/or Services March 2017

1. INTERPRETATION

In these Conditions, the following definitions apply:

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

Conditions: the terms and conditions set out in this document.

Consignment Stock Agreement: a consignment stock agreement between the Supplier and the Customer.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods and/or Services in accordance with these Conditions or pursuant to a Consignment Stock Agreement (as the case may be).

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Force Majeure Event: has the meaning given in clause 10.

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

Order: the Customer's order for the Goods and/or Services, as set out in the order form on the Supplier's website, the Customer's purchase order form, the verbal order provided by the Customer to the Supplier or in the Customer's written acceptance of the Supplier's quotation in the Customer's purchase order form, or overleaf, as the case may be.

Order Confirmation: an order confirmation document sent by the Supplier to the Customer.

Services: the services supplied by the Supplier to the Customer as set out in the Order Confirmation.

Specification: any specification for the Goods and/or Services.

Supplier: Ceratizit WNT Limited (CRN: 03772242).

1.2 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 personal representatives, successors or permitted assigns.
- A reference to a statute or statutory provision is a reference to such statute or 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.

2. BASIS OF CONTRACT

2.1 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.

2.2 To the extent that clauses in these Conditions are not inconsistent with the clauses of the Consignment Stock Agreement, the clauses in the Conditions shall apply to the Consignment Stock Agreement.

In the event of any inconsistency between the Conditions and the Consignment Stock Agreement, the clauses of the Consignment Stock Agreement shall prevail.

2.3 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order, and any applicable Specification submitted by the Customer (if any), are complete and accurate.

2.4 The Order shall only be deemed to be accepted when the Supplier issues an Order Confirmation, at which point the Contract shall come into existence.

2.5 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 the Supplier which is not set out in the Contract.

2.6 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures or on the Supplier's website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.7 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

2.8 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 AND SERVICES

3.1 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

3.2 The Supplier shall provide the Services to the Customer in accordance with the Order Confirmation in all material respects.

3.3 The Customer shall co-operate with the Supplier in all matters relating to the provision of the Services.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. DELIVERY

4.1 The Supplier shall ensure that:

- each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier 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. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 % 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.

4.7 The Supplier 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

5.1 The Supplier warrants that on delivery and for a period of 20 Business Days from the date of delivery (**warranty period**), the Goods shall:

- conform in all material respects with their description and any applicable 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 the Supplier.

5.2 Subject to clause 5.3, if the Customer gives notice in writing to the Supplier in the warranty period that:

- some or all of the Goods do not comply with any warranty set out in clause 5.1; or
- it wishes to return the Goods for any reason the Supplier shall issue a returns number to the Customer and the Customer shall return the Goods to the Supplier by freepost (at the Supplier's cost) or make available for collection by any person nominated by the Supplier (at the Supplier's cost) the Goods. For the avoidance of doubt any other method of returning the Goods shall be at the cost of the Customer. The Customer shall be entitled, at its option, for the returned Goods to be replaced or the price of the returned Goods refunded.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 and/or return the Goods pursuant to clause 5.2(b) in any of the following events:

- the Customer makes any use of such Goods after giving notice in accordance with clause 5.2;
- the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- the Customer alters or repairs such Goods without the written consent of the Supplier;
- the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions; or
- the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer the Supplier receives payment in full (in cash or cleared funds) for the Goods.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
 - give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, then, without limiting any, their right or remedy the Supplier may have the Supplier may at any time:
- require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - 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. PRICE AND PAYMENT

7.1 The price of the Goods and/or Services shall be the price set out in the Order Confirmation, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.

7.2 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.3 The price of the Goods and/or Services is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services.

7.4 The Supplier may invoice the Customer for the Goods and/or Services on or at any time after the completion of delivery.

7.5 The Customer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated.

Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% 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.

7.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. TERMINATION AND SUSPENSION

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.

8.2 For the purposes of clause 8.1, the relevant events are:

- the Customer suspends, or threatens to suspend, payment of its debts, or is unable (or deemed unable) to pay its debts as they fall due or admits inability to pay its debts;
- the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (being a company) 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 Customer;
- (being a company) 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 Customer;
- (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (being an individual) the Customer is the subject of a bankruptcy petition or order;
- a creditor or encumbrance of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(h) (inclusive);
- the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.2(a) to clause 8.2(i), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

8.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY – THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO CLAUSE 9

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- fraud or fraudulent misrepresentation;
- breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or
- any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:

- the Supplier 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
- the Supplier's total liability to the Customer in respect of damage to the tangible property of the Customer arising under or in connection with the Contract shall be limited to £10,000,000; and
- the Supplier'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 [£(AMOUNT) OR the price of the Goods].

9.3 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.

9.4 This clause 9 shall survive termination of the Contract.

10. FORCE MAJEURE

10.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs by other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. GENERAL

11.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, subcontract, 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 the Supplier.

11.2 Any notice or other communication given to a party under or in connection with the 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, sent by pre-paid first class post or other next working day delivery service or commercial courier. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in this clause; 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. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 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.

11.4 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.

11.5 A person who is not a party to the Contract shall not have any rights to enforce its terms.

11.6 The Contract, 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. 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).