

Fine Tubes Ltd.  
Plymbridge Road  
Estover  
Plymouth  
PL6 7LG  
UK

tel +44 (0) 1752 735851  
sales +44 (0) 1752 697216  
fax +44 (0) 1752 733301  
email sales@finetubes.co.uk



## Terms and Conditions of Purchase

Fine Tubes Limited

Revision April 2011

## CONTENTS

| Clause  | Page |
|---|------|
| 1 Definitions and Interpretation .....                | 1    |
| 2 Supply of Goods and/or Services .....               | 2    |
| 3 Seller Warranties .....                             | 2    |
| 4 Product Warranty .....                              | 2    |
| 5 Indemnity and Insurance .....                       | 3    |
| 6 Documents .....                                     | 3    |
| 7 Delivery .....                                      | 3    |
| 8 Acceptance, Defective Goods and Shortages.....      | 4    |
| 9 Risk and Title .....                                | 4    |
| 10 Prices and Payment.....                            | 5    |
| 11 Variation and Changes.....                         | 5    |
| 12 Inspection .....                                   | 5    |
| 13 Confidentiality .....                              | 6    |
| 14 Intellectual Property Rights.....                  | 6    |
| 15 Termination .....                                  | 7    |
| 16 Statutory and Safety Obligations .....             | 8    |
| 17 Fine Tubes Tools and Materials.....                | 8    |
| 18 Export Terms .....                                 | 8    |
| 19 Force Majeure .....                                | 9    |
| 20 Notices.....                                       | 9    |
| 21 Disputes.....                                      | 9    |
| 22 Waiver .....                                       | 10   |
| 23 Severability.....                                  | 10   |
| 24 Contracts (Rights of Third Parties) Act 1999 ..... | 10   |
| 25 Assignment and Sub-Contracting .....               | 10   |
| 26 Entire Agreement.....                              | 10   |
| 27 Governing Law.....                                 | 10   |

## TERMS AND CONDITIONS OF PURCHASE (“Conditions”)

### 1 Definitions and Interpretation

1.1 In these Conditions the words below have the meaning next to them:

|                                 |   |
|---------------------------------|---|
| <b>Acknowledgement of Order</b> | any acknowledgement of Fine Tubes’ Order provided by the Seller to Fine Tubes.  |
| <b>Advice Note</b>              | any formal document provided by the Seller to Fine Tubes containing details of the Goods.   |
| <b>Agreement</b>                | these Conditions and any Order placed subject to such Conditions.   |
| <b>Conditions</b>               | these terms and conditions of purchase.   |
| <b>Delivery</b>                 | has the meaning set out in Condition 7.1 of these Conditions and <b>Deliver</b> and <b>Delivered</b> are to be construed accordingly.               |
| <b>Goods</b>                    | any goods to be supplied by the Seller to Fine Tubes subject to these Conditions as specified in an Order.  |
| <b>Order</b>                    | Fine Tubes’ written instruction to buy the Goods and/or Services from the Seller.   |
| <b>Seller</b>                   | the person, firm or company who provides the Goods and/or Services to Fine Tubes.   |
| <b>Services</b>                 | any services agreed in the Order to be supplied to Fine Tubes by the Seller.  |
| <b>Specification</b>            | any written specification provided by Fine Tubes in respect of the Goods and/or Services and agreed with the Seller in accordance with Condition 2. |

1.2 In these Conditions unless the context requires otherwise:

- 1.2.1 references to these Conditions or any other document are to these Conditions or that document as amended;
- 1.2.2 The singular includes the plural and vice versa; references to any gender include every gender; and references to persons include corporations, partnerships and other unincorporated associations or bodies of persons;
- 1.2.3 all headings are for convenience, have no legal effect and should be ignored when interpreting these Conditions;
- 1.2.4 any obligation not to do anything is deemed to include an obligation not to suffer, permit or cause that thing to be done if it is within the power of the relevant person to prevent that thing being done;
- 1.2.5 a reference to any provision of any enactment will be construed as a reference to that provision or enactment as amended, re-enacted or extended at the relevant time;

- 1.2.6 the definitions contained in the Interpretation Act 1978 apply (unless a specific definition has been included or the context otherwise requires) in interpreting words and phrases used in these Conditions.

## **2 Supply of Goods and/or Services**

- 2.1 The Seller will supply and Fine Tubes will purchase the Goods and/or Services subject to these Conditions.
- 2.2 Fine Tubes will place Orders with the Seller. Upon receipt of each Order a binding contract between the parties will come into existence.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in any Acknowledgment of Order or similar document shall form part of the Agreement between the parties and the Seller waives any right which it otherwise may have to rely on such terms and conditions.
- 2.4 The Seller acknowledges that except as specifically provided within the Order, the rates and prices therein are sufficient to cover its obligations, whether expressed or implied under the Order. When the work or any part of it is to be performed anywhere other than the Seller's premises, the Seller shall be deemed to have satisfied itself as to all local conditions and other factors as may affect the performance of the work.

## **3 Seller Warranties**

- 3.1 The Seller warrants that the quantity, quality and description of the Goods and/or Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any Specification or otherwise agreed in writing between the parties. Any Goods and Services shall comply with all relevant legislation and any applicable British or European standards.
- 3.2 The Seller warrants that:
  - 3.2.1 the Goods will correspond to any Specification at the time of delivery;
  - 3.2.2 the Goods supplied shall be new and shall not have been used previously;
  - 3.2.3 the Goods shall be free from defects in design, material and workmanship;
  - 3.2.4 any Services shall be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as is reasonable. All equipment and tools provided will at all times be maintained in first class condition by the Seller. Fine Tubes reserves the right, at the Seller's cost, to require the replacement of any personnel or tools that do not comply with the provisions of this Condition 3; and
  - 3.2.5 all production of the Goods shall be in accordance with the Order and any Specification, and is subject to Fine Tubes' approval. It is agreed that no payment will be made in respect of Goods which Fine Tubes subsequently rejects.
- 3.3 The warranties contained in this Condition 3 are in addition to any other warranties given to Fine Tubes by the Seller. No implied warranties are excluded.
- 3.4 Where relevant, the Seller will flow down to its sub tier suppliers all applicable obligations and requirements relating to the Goods and/or Services, including, but not limited to, those contained within Conditions 13 and 14.
- 3.5 Fine Tubes shall be entitled to rely on any statement, warranty, or representation made by any of the Seller's employees or agents.

## **4 Product Warranty**

Where the Seller has the benefit of any warranties in relation to components comprised in the Goods, the Seller shall ensure that the benefit of such warranties shall transfer to Fine

Tubes upon Delivery. Fine Tubes may assign any such warranty or any other warranty provided by the Seller to its customers.

## **5 Indemnity and Insurance**

- 5.1 The Seller shall indemnify and hold Fine Tubes indemnified in respect of all loss, damage or injury whatsoever involving any person or property and against any action, claim, demand, cost, charge or expenses arising in connection with the Goods and/or Services, to the extent that the same shall have been caused or contributed to by any breach by the Seller of its obligations under these Conditions or by the negligence of itself, its directors, its employees or its agents.
- 5.2 The Seller shall maintain insurance cover against the liabilities as are envisaged in Condition 5.1 and shall provide to Fine Tubes, on demand, valid certificates of insurance in respect thereof.

## **6 Documents**

All documentation provided by the Seller (unless expressly agreed to the contrary) in connection with this Agreement shall be in the English language.

## **7 Delivery**

- 7.1 The Goods shall be delivered, carriage and duty paid, to Fine Tubes' place of business or to such other place of delivery as agreed by the parties in writing prior to the delivery of the Goods and at a time agreed by the parties. "**Delivery**" will be effected when the Seller (or its carrier or agent), properly unloads the Goods (at its own risk) at the delivery address as directed by Fine Tubes.
- 7.2 The proposed date for Delivery shall be specified in the Order, agreed between the parties, or, if no such date is specified, then physical delivery shall take place within 28 days of the Order being placed.
- 7.3 The Seller shall ensure that each delivery package or case is accompanied by a delivery note which shows, amongst other things, the Order number, date of Order, number of packages and content and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 7.4 The Seller shall not despatch the Goods before the receipt of Fine Tubes' Order.
- 7.5 Time shall be of the essence with regard to Delivery. If the Goods are not delivered on the agreed delivery date then, without prejudice to any other rights which it may have, Fine Tubes reserves the right to:
  - 7.5.1 cancel the Order in whole or in part;
  - 7.5.2 refuse to accept any subsequent delivery of the Goods which the Seller may attempt to make;
  - 7.5.3 recover from the Seller any expenditure reasonably incurred by Fine Tubes in obtaining substitute goods from another supplier; and
  - 7.5.4 claim damages for any additional cost, losses or expenses incurred which are in any way attributable to the Seller's failure to deliver the Goods on the agreed delivery date.
- 7.6 If the Goods are delivered to Fine Tubes in excess of the quantities ordered, Fine Tubes shall not be bound to pay for the excess quantities. Any excess shall remain at the Seller's risk and shall, at Fine Tubes' option, be returned at the Seller's expense.
- 7.7 Each package or case shall be clearly marked with the Seller's registered company name, Order number and Order reference. Where required in accordance with a relevant European Union directive, the Goods shall be stamped with the "CE" mark on the product, the documentation and the packaging.

- 7.8 The Seller shall be responsible for proper packaging, loading and tie-down to prevent damage during transportation. No charge will be payable by Fine Tubes for packing, crating, loading, or storage unless agreed in advance in writing by Fine Tubes. Should the Seller require Fine Tubes to return any packaging material, the Seller must notify Fine Tubes on the relevant delivery note. Any such packaging material shall be returned at the Seller's cost.
- 7.9 All Goods shall be suitably packed to withstand normal freight handling and to withstand periods of storage. If the Goods or any parts thereof are damaged due to faulty or inadequate packing, the damaged Goods or part thereof shall be repaired or replaced at the Seller's expense, whether or not Delivery has taken place.

## **8 Acceptance, Defective Goods and Shortages**

- 8.1 Fine Tubes shall be deemed to have accepted the Goods no sooner than 30 days after the unloading of the Goods is completed at the agreed delivery location, to allow Fine Tubes the opportunity to inspect the Goods following Delivery.
- 8.2 Fine Tubes may reject the Goods at any time up to 30 days after any latent defect in the Goods has become apparent to Fine Tubes, regardless of when such defect comes to Fine Tubes' attention.
- 8.3 If the Goods and/or Services are defective or fail to meet the requirements of any Specification or the Order, Fine Tubes may:
- 8.3.1 at the Seller's cost, return the Goods for repair or replacement or require replacement Services within a timescale specified by Fine Tubes;
  - 8.3.2 in the event of a shortage, require that the Seller delivers the missing quantities to the agreed delivery address as soon as reasonably possible;
  - 8.3.3 carry out any necessary rectification work itself, the costs of which shall be reimbursed in full by the Seller; or
  - 8.3.4 terminate the Agreement.
- 8.4 Fine Tubes may require the Seller to remedy (at the Seller's expense) any defect that may arise in a product in which the Goods have been incorporated if that defect is (a) caused by a defect in the Goods, and (b) arises within twelve (12) months from the date when the Goods have been put into service for their specified use, or twelve months from Delivery, whichever is the later (the **Warranty Period**). The Seller shall guarantee for a further twelve (12) months all remedial work carried out under this Condition 8.4. Where such defect arises within the Warranty Period, but does not become apparent until the Warranty Period has expired, the parties agree that the Seller's obligation under this Condition 8.4 shall remain. For the avoidance of doubt, the Seller's obligations under this Condition 8.4 shall not apply where the Goods purchased by Fine Tubes are raw materials including, but not limited to, raw and unprocessed metals.
- 8.5 Nothing in this Condition 8 shall limit or preclude Fine Tubes from invoking any other remedy at law or provided under the Agreement in respect of a defect or shortage in the Goods.

## **9 Risk and Title**

- 9.1 Risk in the Goods will pass to the Fine Tubes upon Delivery or in the case of physical delivery by instalments, upon Delivery of each individual instalment as appropriate.
- 9.2 Title in the Goods shall pass to Fine Tubes on Delivery except where payment for the Goods is made prior to Delivery, in which case title in the Goods shall pass to Fine Tubes once payment has been made and the Goods have been allocated to the Order.

## 10 Prices and Payment

- 10.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by Fine Tubes shall be exclusive of Value Added Tax (**VAT**) but inclusive of all other taxes, duties and charges. No variation in the price or extra charges shall be payable by Fine Tubes unless evidenced by Fine Tubes' prior written consent.
- 10.2 The Seller warrants that all documents including invoices and all supporting information submitted by the Seller in support of any costs shall be complete and accurate.
- 10.3 The making of any payment by Fine Tubes shall not be deemed to constitute acceptance of any defective work.
- 10.4 Subject to Condition 10.5 below and except as otherwise agreed in writing by Fine Tubes, payment of invoices will be made within 60 (sixty) days from the date when Fine Tubes receives a valid and proper VAT invoice in the correct format (such format to be agreed with Fine Tubes) (the **Due Date**), such invoice not to be submitted before the date of Delivery. The Seller shall also provide an Advice Note where requested to do so by Fine Tubes.
- 10.5 In the event that the Seller Delivers any Goods after a Delivery date agreed between the parties in accordance with Condition 7.2, Fine Tubes may extend the Due Date by a period of time not exceeding the period of such delay in Delivery.
- 10.6 Fine Tubes shall not process any invoice for payment unless it refers to Fine Tubes' Order number which has been received in respect of each item invoiced.
- 10.7 The Seller shall provide Fine Tubes with a monthly statement of account, no later than the fifth day of the month following the physical delivery of any Goods.
- 10.8 The Seller reserves the right to charge interest on any overdue amounts at the rate of 1% per annum over the base rate issued from time to time of the Bank of England, which shall be paid from the Due Date. Such interest shall be calculated on a daily compound basis from the Due Date.
- 10.9 Without prejudice to any other right or remedy, Fine Tubes reserves the right to set off any amount owing at any time from the Seller to Fine Tubes against any amount payable to Fine Tubes by the Seller under the Agreement.

## 11 Variation and Changes

- 11.1 Unless agreed otherwise between the parties, the Conditions apply to all Fine Tubes' Orders from the Seller. Any variations to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised representative of Fine Tubes.
- 11.2 The Seller shall perform any reasonable changes to the Order required by Fine Tubes. Such changes may include additions to or reductions in the quantity of Goods and/or Services or to any Specifications or drawings. In order to effect such changes, Fine Tubes shall give notice to the Seller in writing, and the Seller shall promptly advise Fine Tubes in writing of the reasonable effect on price and proposed delivery date.
- 11.3 The Seller shall carry out all changes which are required, and which have arisen as a result of an act or omission or default of the Seller, the cost of which shall be paid by the Seller.

## 12 Inspection

- 12.1 Upon reasonable prior notice to the Seller, a representative duly authorised by Fine Tubes (including other organisations, customers and regulatory authorities) shall have access at all reasonable times to the Seller's works to test, inspect or examine the Seller's processes, the production of Goods and/or the provision of the Services and all relevant records relating thereto, to ensure that the requirements of the Order are met.

- 12.2 If, as a result of inspection or testing, Fine Tubes is not, in its sole discretion, satisfied that the Goods or the Services comply in all respects with the Order, Fine Tubes may reject any Goods and/or Services which it considers to be defective or inferior in quality of materials, workmanship, processing or design or not in accordance with the Specification. The Seller shall take such steps as are necessary to ensure compliance with the Order. Any work so rejected shall immediately be replaced or corrected at the Seller's expense. The Seller shall resubmit the re-performed work for inspection or testing, the result of which will be determined in Fine Tubes sole discretion.
- 12.3 The Seller shall supply at its own expense, certificates of analysis, tests, and certificates of origin as are required by Fine Tubes in connection with the Goods and/or Services, or required by law. Such information shall be delivered no later than the Goods to which they relate and shall be addressed for the attention of the Fine Tubes purchasing department at Fine Tubes' premises.
- 12.4 The Seller shall retain original copies of all quality records for a minimum of five (5) years following Delivery (unless otherwise stated in the Order or Specification).

### **13 Confidentiality**

- 13.1 The Seller will not, either during the period of the Agreement or at any subsequent time, disclose to any other person any information of a commercial or proprietary nature including, without limitation, the terms and conditions of the Agreement and the commercial and financial arrangements evidenced by the Agreement (**Confidential Information**) disclosed to it by Fine Tubes, in writing or orally, whether before or after the date of the Agreement or which the Seller may make or discover during the term of the Agreement, other than:
- 13.1.1 to the Seller's employees, sub-contractors and agents insofar as it is necessary for the performance of its obligations under the Agreement;
  - 13.1.2 with the prior written consent of Fine Tubes;
  - 13.1.3 as required by law or the requirements of any recognised stock exchange;
  - 13.1.4 where such information comes into the public domain other than by a breach of the Agreement.
- 13.2 The Seller will procure that any person to whom Confidential Information is disclosed is made aware of the obligations of confidentiality set out in the Agreement and will ensure that any such third party will comply with those obligations as if the third party were itself a party to the Agreement.

### **14 Intellectual Property Rights**

- 14.1 Should Fine Tubes commission the Seller to produce a design in relation to any Order, the copyright, design rights, process of production or any other intellectual property rights in the design shall be Fine Tubes' exclusive property.
- 14.2 All copyright or other intellectual property rights in the work produced by the Seller (other than design rights already accruing to Fine Tubes under Condition 14.1) shall be assigned to Fine Tubes and the Seller undertakes to execute all documents and take all steps necessary to secure to Fine Tubes all rights assigned by this Condition 14.
- 14.3 The Seller warrants that it will not infringe the intellectual property rights of any third party and that all intellectual property rights assigned to Fine Tubes pursuant to Condition 14.2 have not been previously assigned, licensed or otherwise encumbered.
- 14.4 Any Specification, together with the copyright, design rights or any other intellectual property rights in that Specification, shall be Fine Tubes' exclusive property. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for

the purpose of any Order. Fine Tubes' rights under these Conditions are in addition to the statutory conditions implied by the Sale of Goods Act 1979.

- 14.5 The Seller shall hold Fine Tubes indemnified from and against all claims, damages and costs in respect of any intellectual property rights claims which may be infringed by the Goods and/or Services supplied under any Order.

## 15 Termination

- 15.1 Without prejudice to any other rights of termination, Fine Tubes may terminate the Agreement at any time, in whole or in part, on giving the Seller fourteen (14) days' prior notice of such termination. Upon receipt of such notice, the Seller shall cease all performance except to the extent provided in the notice of termination. In such event, Fine Tubes shall make payment to the Seller (as full and final settlement of all claims which the Seller may have against Fine Tubes as a result of termination) for all work satisfactorily performed up to the date of termination. This shall include all materials, which have been procured properly by the Seller for incorporation in the work.
- 15.2 Fine Tubes is entitled to terminate the Agreement immediately on written notice to the Seller if:
- 15.2.1 the Seller commits an irremediable material breach of the Agreement, or any other material breach of the Agreement and fails to remedy such breach within seven (7) days of being required by written notice to do so. For the purpose of the Agreement "**material breach**" includes persistent breaches of the Agreement whether or not such breaches are significant in the context of the Agreement as a whole and/or have been remedied by the Seller. If the Seller fails to comply with the requirements of the notice, or in Fine Tubes' sole opinion the default is incapable of remedy to Fine Tubes' satisfaction, Fine Tubes shall be entitled to terminate the Order in whole or in part, immediately serving notice in writing to the Seller to such effect, without prejudice to any other rights under the Order or otherwise, and shall have the right to retain any Goods previously supplied under the Order;
- 15.2.2 the Seller is unable to pay its debts (within the meaning of section 123(1) of the Insolvency Act 1986) or an order is made or a resolution passed for its liquidation, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer is appointed over it or all or any substantial part of its assets or takes formal steps towards making any kind of composition, compromise or arrangement involving it and any of its creditors, or anything analogous to the foregoing will occur in any jurisdiction;
- 15.2.3 the Seller ceases, or threaten to cease, to carry on business;
- 15.2.4 Fine Tubes reasonably apprehends that any of the events mentioned above is about to occur and notifies the Seller accordingly.
- 15.3 The termination of the Agreement for any reason will be without prejudice to any rights or obligations which had accrued before the date of termination. The termination of the Agreement for any reason will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or to continue in force on or after termination.
- 15.4 Fine Tubes' rights and remedies are in addition to and without prejudice to other rights and remedies under the Agreement including Fine Tubes' right to allow the Seller to continue its work and recover from the Seller the loss or damage suffered by Fine Tubes in respect of the Seller's defective or delayed performance. Those Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 15.5 The Seller acknowledges its obligation to take all reasonable steps to mitigate any liabilities arising from termination.

## **16 Statutory and Safety Obligations**

- 16.1 The Seller shall comply with all relevant statutes, laws, regulations, and by-laws and European Union Directives affecting the performance of the Order (including the Control of Substances Hazardous to Health Regulations (COSHH), latest edition) and good engineering practice, and shall comply with Fine Tubes' safety regulations as notified to the Seller from time to time.
- 16.2 The Seller shall provide Fine Tubes in writing such information to ensure the Goods will be safe and without risk to health when properly handled, stored, transported and used.
- 16.3 The Seller shall provide all equipment, fittings and accessories which may not have been specifically mentioned but which are necessary for the efficient working of the Goods shall be deemed to have been included in the price set out in the Order. All such items shall be delivered with the Goods.
- 16.4 The Seller shall provide a current safety data sheet with each delivery package or case.

## **17 Fine Tubes Tools and Materials**

- 17.1 All special dies, tooling, moulds, patterns, jigs, fixtures, and any other property which Fine Tubes may provide to the Seller or specifically pay for, for use in the performance of an Order, shall:
  - 17.1.1 be and remain the property of Fine Tubes;
  - 17.1.2 be subject to removal upon Fine Tubes' instruction;
  - 17.1.3 be used exclusively on Fine Tubes' Orders;
  - 17.1.4 be held at the Seller's risk, and
  - 17.1.5 be kept insured by the Seller at its own expense while in the Seller's custody or control in an amount equal to the replacement cost, with loss payable by the Seller.
- 17.2 The Seller shall indemnify Fine Tubes against all liability, loss, damage and cost, sustained by Fine Tubes arising from a claim by the Seller's employees, agents or consultants for bodily injury or death in connection with the operation of such equipment while in the Seller's care, custody or control.
- 17.3 Where Fine Tubes provides free issue material for incorporation into the Goods, the Seller shall use such materials economically, and any surplus shall be accounted for to Fine Tubes and disposed of in accordance with Fine Tubes' instructions. Waste, loss or damage to such materials arising from poor workmanship or the Seller's failure to maintain such materials in good order or condition shall be made good at the Seller's expense, replacements being of equivalent quality and specification and subject to Fine Tubes' written approval.

## **18 Export Terms**

- 18.1 Where the Goods are supplied for import into the United Kingdom, the provisions of this Condition 18 apply (subject to any additional terms agreed in writing between the parties). Any term or expression which is defined in or given a particular meaning by the provisions of Incoterms 2010 has the same meaning in these Conditions, unless there is any conflict, in which case these Conditions will prevail.
- 18.2 Unless otherwise agreed between the parties, the Goods will be delivered duty paid (or DDP as defined in the Incoterms 2010). Fine Tubes is under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 18.3 The Seller is responsible for ensuring that the Goods comply with the laws and regulations of the country to which it requires the Goods to be supplied and for

obtaining the necessary export/import licences, consents and approvals. The Seller will not hold Fine Tubes liable for any failure to comply with those laws and regulations or to obtain the necessary licences, consents or approvals and the Seller accepts liability and responsibility for and import duty or other local tax.

## **19 Force Majeure**

- 19.1 Neither party should be liable for delay in performing or failure to perform its obligations if the delay or failure results from events or circumstances outside their reasonable control such as war, civil unrest, fire, flood, labour disputes (including those initiated by a party) and trade disputes (a "**Force Majeure Event**"). Such delay or failure shall not constitute a breach of the Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented. If such delay or failure persists for more than three months, Fine Tubes shall be entitled to terminate the Agreement to the extent of Goods not yet delivered to it by the Seller. In the event of such a termination, Fine Tubes may, as it sees fit, either:
- 19.1.1 be entitled to compensation to the extent of Goods not yet delivered to it by the Seller; or
- 19.1.2 be entitled to a full refund of any pre-payment for Goods not delivered.
- 19.2 The party affected by the Force Majeure Event will immediately provide written notice of such event to the other party and take all steps as are necessary, without as a result having to incur the expenditure, to bring the Force Majeure Event to an end or to find a solution by which the Agreement may be performed despite the Force Majeure Event.
- 19.3 The party concerned shall take all reasonable steps to avoid further or consequential delay and to proceed with the due performance of the Order.
- 19.4 Fine Tubes shall have the right to terminate the Order if the delivery of the Order is delayed by more than sixty (60) days due to a Force Majeure Event, without additional liability to either party.

## **20 Notices**

Any notices served by the parties under the Agreement may be delivered by hand or sent by first class, pre-paid, recorded delivery to the address of the registered office at the time of the notice of the addressee. Such notice shall be deemed to have been given on delivery at the relevant address or, if sent by first-class pre-paid post, two business days (that is, any day which is not a Saturday, Sunday or public holiday in the place at or to which the notice is left or sent) or seven business days in the case of overseas post sent by recorded delivery airmail after the date of posting, or if sent by fax, when despatched, subject to confirmation of uninterrupted transmission by a transmission report. Notice is not validly served if sent by e-mail.

## **21 Disputes**

- 21.1 In the event of any dispute or difference arising between the parties in connection with the Agreement, the parties shall attempt to resolve such dispute or difference (including any dispute relating to an invoice) in good faith and without recourse to legal proceedings. If the parties are unable to resolve such dispute or difference within fifteen (15) working days of initial discussions between the parties taking place, either party may send notice to the other in writing requesting that the matter be referred to senior representatives of the parties with authority to settle the dispute, who shall then attempt to resolve the dispute within thirty (30) working days of that written request. If the dispute or difference is not resolved as a result of a meeting of the senior representatives of the parties, or if no meeting of the senior representatives occurs within the prescribed time periods set out in this Condition 21, either party may take action in accordance with Condition 27.
- 21.2 Nothing in this Condition 21 is intended to restrict the right of either party to apply to any court for injunctive or other urgent relief.

## **22 Waiver**

- 22.1 Failure or delay by Fine Tubes in enforcing or partially enforcing any provision of the Agreement shall not be construed as a waiver of its rights under the Agreement.
- 22.2 No waiver or forbearance by Fine Tubes of any of its rights under the Agreement or any other agreement with the Seller shall be construed as a waiver of any right under the Agreement and shall not preclude Fine Tubes from enforcing any of its legal rights whatsoever.

## **23 Severability**

Any provision of the Agreement which is held to be invalid or unenforceable in any jurisdiction will be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of the Agreement, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

## **24 Contracts (Rights of Third Parties) Act 1999**

Except as expressly provided in the Agreement, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term or condition of the Agreement.

## **25 Assignment and Sub-Contracting**

Fine Tubes may assign, transfer or sub-contract in whole or in part any of its rights or obligations under the Agreement. The Seller may not assign, transfer or sub-contract in whole or in part any of its rights or obligations under the Agreement without Fine Tubes' prior written consent.

## **26 Entire Agreement**

The Agreement sets out the entire agreement and understanding between the parties and supersedes any previous agreements between them relating to the subject matter of the Agreement.

## **27 Governing Law**

English law applies to the Agreement and, subject to Condition 21.3, the construction, validity and performance of the Agreement shall be governed by English law. The parties irrevocably agree that Fine Tubes shall be entitled to bring an action against the Buyer in any other court of competent jurisdiction if Fine Tubes considers that such action is appropriate for the purposes of protecting Fine Tubes' interests.