

TERMS AND CONDITIONS OF SALE (these "Terms and Conditions")

1. DEFINITIONS AND INTERPRETATION

In this Contract:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

"Business Day"	any day other than: (i) a Saturday; (ii) a Sunday; (iii) a day which is a bank holiday in England (as set out on www.gov.uk/bank-holidays for bank holidays in England); or (iv) a day when Focus SB is not open for business.
"Confidential Information"	any information in any form or medium obtained by or on behalf of one Party from or on behalf of the other Party in relation to this Contract which is expressly marked as confidential or which a reasonable person would reasonably consider to be confidential whether disclosed or obtained before, on or after the date of this Contract together with any reproductions of such information or any part of this information (and Focus SB's "Confidential Information" shall include the Specifications);
"Contract"	these Terms and Conditions and any relevant terms of any applicable Long Term Agreement, together with: (a) the relevant Order Acknowledgement (if any); or (b) (if no Order Acknowledgement) the terms of the relevant Order (except to the extent that the terms of the Order deviate from the Quotation (if any) or from the Long Term Agreement (if any), and also except to the extent not agreed by Focus SB);
"Customer"	the customer of Focus SB whose details may be more particularly set out in the relevant order or long term agreement between the Parties;
"Event of Force Majeure"	has the meaning given to it in Clause 12.1;
"Export Delivery"	a delivery where the destination of the Products for the Customer under this Contract is to a location other than the UK or the Isle of Man or the Channel Islands;
"Focus SB"	Focus SB Limited, a company registered in England under number 04113926 whose registered office is at Napier Road, Castleham Industrial Estate, St. Leonards On Sea, East Sussex, TN38 9NY;
"Intellectual Property Rights"	copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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;
"Liability"	has the meaning given to it in Clause 9.7.1;
"Long Term Agreement"	any written agreement between the Parties governing the long term relationship concerning the supply of Products by Focus SB to the Customer, and which may be in the form of the Customer's agreement to proceed with placing an Order following Focus SB's written confirmation of the Parties' overall relationship terms in response to the Customer's completed account application form, the terms of which agreement may be updated with immediate effect by Focus SB informing the Customer in writing of any variation to the same from time to time (and which terms are agreed by the Customer's conduct in proceeding with placing an Order following receipt of Focus SB's relevant written communication);
"Negligence"	has the meaning given to it in Clause 9.7.2;
"Order"	a request by the Customer to Focus SB for the provision of particular products, which shall be in accordance with the terms of any corresponding or relevant Quotation or Long Term Agreement (if any);
"Order Acknowledgement"	the written document or written communication (if any) which Focus SB despatches to the Customer (in response to Supplier's receipt of an Order), which may contain (together with any applicable Long Term Agreement) the particular details of any provision of particular Products for a particular order or enquiry

and which may reflect the commercial terms of the Quotation or Long Term Agreement;

"Party"	either Focus SB or the Customer;
"Payment"	has the meaning given to it in Clause 4.1;
"Price"	the price payable by the Customer to Focus SB for the supply by Focus SB of the Products, as stipulated or calculated in accordance with this Contract or any Long Term Agreement (or if no such price or basis is stipulated there, this shall be Focus SB's standard price for the Products current at the date the Order is accepted by Focus SB (and the Customer acknowledges that this may be an updated price since any previous contract between the Parties));
"Product"	any of Focus SB's products provided or to be provided by Focus SB to the Customer pursuant to this Contract;
"Quotation"	the written quotation (if any) from Focus SB to the Customer detailing the Products that Focus SB is willing in principle to supply to the Customer for a particular order;
"Specifications"	all specifications, designs, drawings, diagrams, recommendations, reports or evaluations, on whatever media, provided or used or to be provided or used by Focus SB in the course of generating a Quotation or providing Products for the Customer; and
"UK Delivery"	a delivery where the destination of the Products for the Customer under this Contract is to a location in the UK or the Isle of Man or the Channel Islands;

- 1.2 references to "**Clauses**" are to clauses of these Terms and Conditions;
- 1.3 headings are inserted for convenience only and shall not affect the interpretation or construction of this Contract;
- 1.4 words imparting the singular shall include the plural and vice versa;
- 1.5 words imparting a gender shall include the other gender and the neutral and references to "**persons**" shall include an individual, company, corporation, firm or partnership;
- 1.6 references to "**includes**" or "**including**" or like words or expressions shall mean without limitation;
- 1.7 any obligation in this Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done;
- 1.8 references to any statute or statutory provision shall include any subordinate legislation made under it, any provision which it has modified or re-enacted (whether with or without modification) and any provision which subsequently supersedes it or re-enacts it (whether with or without modification); and
- 1.9 references to "**written**" or in "**writing**" (except in respect of sending a notice in accordance with Clause 13) includes in electronic form.

2. CONTRACT

- 2.1 The terms of this Contract apply to the exclusion of any terms and conditions submitted, proposed or stipulated by the Customer. These Terms and Conditions apply to Focus SB's supply of all Products. The placement of any Order, the giving by the Customer of any delivery instruction or the acceptance by the Customer of delivery of the Products shall constitute unqualified acceptance by the Customer of these Terms and Conditions.
- 2.2 These Terms and Conditions do not apply to Focus SB's supply of goods or products to consumers.
- 2.3 Save as expressly provided herein, this Contract (together with any documents referred to in it) shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Contract and in any way relating to the subject matter of this Contract and to the exclusion of any representations not expressly stated herein save for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each Party acknowledges that it has not entered into this Contract based on any representation that is not expressly incorporated into this Contract.
- 2.4 This Contract (together with any documents referred to in it) constitutes the whole agreement and understanding of the Parties as to its subject matter and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.
- 2.5 Subject to Clause 2.3, all materials and other particulars furnished by Focus SB prior to any Quotation or any Long Term Agreement, or in Focus SB's sales or marketing materials or other documents (including its catalogues, trade literature, brochures, quotations, price lists or website) or made orally or by demonstrations or sample by Focus SB, are given for general information purposes only and the Customer acknowledges that it is not entering into this Contract in reliance upon any such materials or other particulars (except to the extent that such materials or particulars form part of this Contract); the Products may also look different to their representation in any such materials or particulars.

- 2.6 Some of the Products may have variations of colour, shading, size and finish. Depending on the nature of the Products supplied, a degree of variation is acceptable and may have natural imperfections. These are not faults. In any event, the Customer is responsible for checking the satisfactory degree of variation and satisfactory nature of the Products (including any damage) before any of the Products are installed or fixed by any person (and the Customer is responsible for ensuring that all subsequent customers do the same) and if the Customer is not satisfied that the colour, shading, size or finish accords to the Specifications, the Customer shall inform Focus SB in writing before proceeding with installation or fixing or supply. To the extent permitted by law, Focus SB will not be responsible or have any Liability for any losses incurred if the Customer does not adhere to this. In addition, to ensure that money is not wasted, the Customer agrees (if applicable) not to allow installation or fixing or subsequent supply to be booked until the Customer is satisfied that the Products have been delivered in full to the standard required by this Contract.
- 2.7 The Customer shall submit the Order in writing (including electronically through such medium or third party as stipulated, permitted or made available by Focus SB) or in any form, unless Focus SB requires the Order to be in a particular form in which case the Customer shall ensure that the Order is in that form. Unless otherwise agreed between the Parties in writing, any Order for an Export Delivery must be in writing in order to be valid and must include the territory of installation. The Customer shall ensure that any Order is on the same terms and within any parameters set out in any Quotation and any Long Term Agreement. Unless otherwise agreed between the Parties in writing, any Order must be in accordance with the applicable Quotation provided by Focus SB. If the Parties agree that Focus SB will proceed to supply Product(s), then such supply shall be only on the understanding that any differences in the Order from any Quotation or any Long Term Agreement shall have no effect unless the Parties expressly agree in writing.
- 2.8 Subject to Clause 2.9, unless Focus SB indicates a contrary method of acceptance in writing, this Contract shall be legally formed and the Parties shall be legally bound on the earlier of:
- 2.8.1 Focus SB despatching its Order Acknowledgement to Customer confirming the terms on which the Parties have agreed to proceed; or
- 2.8.2 Focus SB delivering some or all of the Products agreed in the Order or (if earlier) Focus SB informing the Customer that those Products are ready for collection.
- Notwithstanding any timeframe stipulated in any relevant Quotation for the Customer to respond to or accept it through an Order, the Contract shall only be formed and accepted in accordance with Clauses 2.8.1 or 2.8.2. Each of the Parties may decline to enter into this Contract for any reason until this Contract is formed.
- 2.9 Focus SB may at any time before delivery (or collection by the Customer, if permitted by Focus SB) without Liability inform the Customer that it is rejecting all or any part of the Order.
- 2.10 No change to this Contract shall be binding unless it is agreed in writing by authorised representatives of both Parties.
- 2.11 In the event of any conflict between the provisions of these Terms and Conditions and the provisions of the rest of this Contract or any Long Term Agreement, then the following order of precedence shall apply:
- 2.11.1 the Long Term Agreement prevails over an Order, Order Acknowledgement and these Terms and Conditions; and
- 2.11.2 any Order Acknowledgement prevails over the Order; and
- 2.11.3 the Order prevails over these Terms and Conditions.
- 2.12 The Customer shall ensure that each Order contains full details of the Product(s) to be supplied, the quantity of each Product ordered and the identity of the Customer. Any price or delivery requirement other than in accordance with this Contract is of no effect.
- 2.13 It is the Customer's responsibility to ensure that all information supplied by it is complete and accurate. The Customer shall ensure that each Quotation, Order and Order Acknowledgement meet its particular requirements.
- 2.14 Any advice or recommendation given by or on behalf of Focus SB to the Customer as to storage, transport, installation, maintenance, application or use of the Products is for convenience only and, unless confirmed in writing by an authorised representative of Focus SB that it is binding on Focus SB, it shall be entirely at the Customer's own risk to follow any such advice or recommendation, without any Liability on Focus SB. The Customer is responsible for storing, transporting, installing, maintaining, applying and using the Products in accordance with all applicable laws, regulations, byelaws and codes of practice.
- 2.15 Each Order once accepted by Focus SB constitutes a separate contract. There may be more than one contract between the Parties in force at the same time as this Contract.
- 2.16 Unless otherwise expressly agreed between the Parties in writing, no Contract shall be a sale by sample.

3. DELIVERY AND RISK

- 3.1 Subject to Clauses 2.9, 3.2, 10.12, 11 and 12.5, in consideration for the payment of the Price and any other sums due by the Customer under this Contract, Focus SB shall supply to the Customer the Products referred to in the Contract.

- 3.2 Focus SB reserves the right to delay delivery or cancel an Order if any payment due from the Customer to Focus SB has not yet been made or if the amount owing by the Customer to Focus SB under all contracts between the Parties (including under this Contract) exceeds any credit limit for credit extended by Focus SB to the Customer from time to time. Focus SB may update the credit limit with immediate effect by informing the Customer in writing from time to time.
- 3.3 Any due dates or lead times quoted for delivery of the Products are approximate only and Focus SB shall not have any Liability for any delay in executing any deliveries for whatever reason nor for any loss or damage arising out of any such delay. Any timeframe for delivery in a previous contract shall be no indication of the timeframe for delivery in this Contract.
- 3.4 Focus SB may supply Products with modifications or improvements incorporated into them or with a substituted brand.
- 3.5 Packaging shall be in accordance with Focus SB's customary practices (suitable for anticipated transport conditions for arrival with the Customer so that the Products are not damaged) and with leaflets and labels in English. The Customer shall be responsible for ensuring that it carries out any re-labelling or re-packaging in accordance with all applicable laws, regulations, byelaws, codes of practice.
- 3.6 Partial delivery or performance shall be permitted. Focus SB may deliver and provide the Products in instalments. Unless the Parties otherwise agree in writing, Focus SB may invoice the Customer for each instalment.
- 3.7 Delay, default or non-delivery of any instalment by Focus SB shall not entitle the Customer to cancel or terminate, and shall not affect, the remainder of this Contract.
- 3.8 Unless otherwise agreed between the Parties:
- 3.8.1 for a UK Delivery, Focus SB shall deliver the Products to the Customer's designated delivery address in the UK, the Isle of Man or the Channel Islands; or
- 3.8.2 for an Export Delivery, Focus SB shall deliver the Products Ex Works (Incoterms 2020) at the place stipulated for delivery in this Contract (or if none then at Focus SB's usual place for despatch). Focus SB shall inform the Customer when the Products will be ready for receipt or collection. The Customer shall ensure that it is ready to receive or collect the Products at the times reasonably stipulated by Focus SB. If the Customer does not collect the Products at the date and time stipulated by Focus SB as being the date and time for collection, (without prejudice to any other right or remedy available to it) Focus SB may charge the Customer for its reasonable storage fees at its then standard storage rates and for Focus SB's other reasonable costs.
- 3.9 If there is any conflict between the provisions of Incoterms 2020 and this Contract, this Contract shall prevail.
- 3.10 Where Focus SB delivers other than Ex Works (Incoterms 2020), Focus SB may either use its own drivers or a third party carrier selected by Focus SB.
- 3.11 Except to the extent otherwise agreed in writing between the Parties, Focus SB reserves the right to charge the Customer for the costs of any delivery (whether using its own drivers or a third party carrier) at its then standard rates. Any delivery charge shall be stated in the Quotation and Focus SB shall invoice Customer for those applicable delivery charges at the same time as invoicing for the Products.
- 3.12 Where Focus SB delivers the Products to the Customer's (or its direct or indirect customer's or courier's) premises, Focus SB shall offload the Products at the nearest entrance to the delivery address and at ground floor level only. It is the Customer's responsibility to move or transfer the Products from that point to any other part of the delivery address or destination. The Customer shall provide or procure the provision of any delivery vehicle with reasonable access to park and deliver, or give Focus SB sufficient notice for reasonable arrangements for making deliveries.
- 3.13 The Customer shall, or shall require its courier or other agent to, sign a delivery note and other documentation requested to be signed upon receipt of the Products. The signing of any such documentation shall be evidence that the Products have been delivered and in the quantities stipulated in the documentation. The Customer shall (or shall require its courier or other agent to) inspect the Products and packaging for any obvious damage (including breakages) and make a note of any obvious damage when signing.
- 3.14 All risk in the Products shall pass to the Customer upon delivery, provided that where delivery is delayed due to breach by the Customer of its obligations under this Contract risk shall pass at the date when delivery would have occurred but for that breach.
- 3.15 Unless otherwise agreed between the Parties, the Customer shall keep the Products fully insured on Focus SB's behalf with a reputable insurance company to the reasonable satisfaction of Focus SB for their full price against all risks of loss or damage from the time when the risk passes to the Customer until property passes in accordance with Clause 4. On request, the Customer shall produce the policy of insurance to Focus SB. If the Products are lost, damaged or destroyed, the Customer shall hold the proceeds of insurance for and to the order of Focus SB pending Payment.
- 3.16 For Export Deliveries, the Customer shall be responsible for ensuring their suitability and complying with all applicable laws, regulations, byelaws, codes of practice, rules and standards governing the importation, installation and use of the Products in the destination country and for paying any import and export duties or levies. Unless otherwise explicitly agreed between the

Parties, Focus SB does not warrant compliance with or knowledge of any local laws, regulations, byelaws, codes of practice, rules and standards.

3.17 Before delivery, Focus SB shall:

- 3.17.1 use adequate facilities for performing its activities under this Contract, including manufacture and storage of the Products;
- 3.17.2 observe all applicable laws, regulations, byelaws and codes of practice in respect of manufacture, sale, supply, export, storage, packaging, labelling and transportation of the Products from Focus SB to the Customer, as are applicable in Focus SB's place of manufacture or supply;
- 3.17.3 obtain and pay for and at all times maintain and comply with and conform to, all necessary or desirable licences, authorisations, approvals, consents, permissions and certificates of origin required for the manufacturing, storage, sale and supply of the Products as are applicable in Focus SB's place of manufacture or supply;
- 3.17.4 keep all inventory, stocks and supplies of the Products in conditions appropriate for their storage.

3.18 If delivery or installation of the Products is delayed or obstructed through the Customer's default or breach of this Contract or if the Customer declines or delays in accepting or taking delivery or receipt or installation of the Products, then (subject to Clause 8) Focus SB shall not have any Liability as a result and Focus SB may (without prejudice to any other right or remedy available to it) do all or any of the following:

- 3.18.1 charge a re-delivery fee;
- 3.18.2 charge a reasonable storage fee for the Products;
- 3.18.3 sell the Products for Focus SB's account;
- 3.18.4 cancel this Contract as regards any Products that remain to be delivered or installed or performed; and
- 3.18.5 require the Customer to indemnify Focus SB for any and all losses, liabilities, claims, proceedings, judgments, damages, demands, actions, costs, charges, expenses, penalties and fines suffered or incurred by Focus SB as a result of the Customer declining or delaying.

3.19 From delivery, the Customer shall:

- 3.19.1 use adequate facilities for receipt and use of the Products, and handle, store, install and ensure the usage of the Products (by or on behalf of it and any subsequent customer or user) in accordance with Focus SB's (or the manufacturer's) instructions or requirements;
- 3.19.2 observe all applicable laws, regulations, byelaws, codes of practice, rules and standards in respect of installation, use, sale, supply, storage and transportation of the Products, as are applicable from the place of receipt to the Customer's (or its customer's) location;
- 3.19.3 obtain and pay for and at all times maintain and comply with and conform to, all necessary or desirable licences, authorisations, approvals, consents and permissions required for the installation, use, sale, supply, storage and the transportation of the Products;
- 3.19.4 keep all inventory, stocks and supplies of the Products in conditions appropriate for their storage; and
- 3.19.5 on or before delivery of the Products to the Customer's customer or a carrier check the Products in accordance with its regulatory requirements and give them adequate advice and information as to the handling, installation, storage and use of the Products (including that installation is carried out correctly and by a qualified electrician).

4. TITLE

4.1 Notwithstanding delivery, title to and ownership of the Products shall not pass to the Customer until Focus SB has received in full (in cleared funds) all sums due to it in respect of:

- 4.1.1 the Products; and
- 4.1.2 all other sums which are or which become due to Focus SB from the Customer on any account;

("Payment").

4.2 Until Payment, the Customer shall:

- 4.2.1 hold the Products on a fiduciary basis as Focus SB's bailee;
- 4.2.2 hold the Products in good, saleable condition;
- 4.2.3 keep an up-to-date list of the location of Focus SB's property and present this to Focus SB upon request;
- 4.2.4 store the Products separately from other goods or in any way so that they remain readily identifiable as Focus SB's property; and
- 4.2.5 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products.

4.3 The Customer may resell the Products before Payment solely on the following conditions:

- 4.3.1 any sale shall be effected in the ordinary course of the Customer's business at full market value;
- 4.3.2 any such sale shall be a sale of Focus SB's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale;

4.3.3 the Customer shall keep the proceeds of sale separate from any money or property of the Customer or third parties; and

4.3.4 the Customer shall still be responsible for paying to the full value of the Payment. If Focus SB requires, the Customer shall authorise and direct such third party buyer to pay to Focus SB a like part of the sum due to the Customer in respect of the Products sold and assign to Focus SB such part of the debt owed to the Customer by the third party.

4.4 If the Products are attached to or incorporated into or mixed with any other materials or goods or substances or used in any manufacturing process, the property in the new material or good or substance shall vest until Payment in Focus SB in the proportion of the value of the Products to the other constituent elements.

4.5 Focus SB may at any time until title passes under this Clause 4 without notice recover possession of the Products which are the property of Focus SB. Focus SB may also require the Customer at the Customer's cost, within three days of Focus SB's request, to deliver up to Focus SB or make available to Focus SB for collection from a single accessible collection point as Focus SB requires all Products which are the property of Focus SB. The Customer hereby grants, or shall procure the grant, to Focus SB for Focus SB and its agents, staff, officers, employees and contractors an irrevocable licence to enter for the purpose of recovering possession of the Products any premises then occupied by or in the ownership or possession of the Customer or the Customer's direct or indirect customer. The Customer shall indemnify Focus SB against all claims, losses, damages, liabilities, costs and expenses so arising in exercising its rights under this Clause 4.5.

4.6 Focus SB shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from Focus SB.

4.7 On termination or expiry of this Contract, howsoever arising, Focus SB's rights contained in this Clause 4 shall remain in effect.

5. WARRANTY

5.1 Subject to the other provisions of this Clause 5, Focus SB warrants that:

- 5.1.1 as at delivery, the Products shall be undamaged; and
- 5.1.2 for 12 months from delivery, the Products shall be free from material defects and shall materially conform to the description of the Product (including the size, finish, technical information and other Specification) in this Contract or published in writing in data sheets by Focus SB for that Product. Those finishes described by Focus SB as "living finishes" are an exception to this as they will change over time.

5.2 Focus SB is not responsible for any services or products unless expressly stipulated in this Contract that Focus SB will provide them. Except for any matter upon which Focus SB specifically agrees in writing with the Customer to advise or do, Focus SB shall not have any Liability for advising on, or failing to advise on, or doing, or failing to do, anything else (including on any laws, regulations, byelaws, codes of practice, rules and standards).

5.3 The Customer shall check the Products for obvious damage on delivery. Focus SB shall not have any Liability for any obvious loss or damage on delivery unless the Customer informs and provides full details to Focus SB in writing within seven days.

5.4 Subject to Clause 5.6, Focus SB shall at its option, within a reasonable timeframe:

- 5.4.1 replace;
- 5.4.2 repay an appropriate portion of the Price of; or
- 5.4.3 provide a credit note in respect of a reasonable part of;

the delivered Products which are not in conformance with the warranty set out in Clause 5.1.

5.5 Focus SB shall not have any Liability for providing Products to the extent caused by Focus SB's compliance with and reliance on the Customer's instructions or requirements or Focus SB's compliance with any relevant laws, regulations, byelaws, codes of practice, rules or standards.

5.6 Focus SB's Liability for defective or damaged Products is subject to:

- 5.6.1 the Customer informing Focus SB in writing of any claim promptly upon discovery of the defect or damage and, subject to Clause 5.3, in any event within seven days (other than anything that involves potential danger to health in which case it shall be no more than one Business Day) of discovery, specifying with reasonable detail the way in which it is alleged that the Products do not conform to this Contract;
- 5.6.2 the Customer allowing Focus SB to take all control over decisions in respect of dealing with the issue including with third parties;
- 5.6.3 the Customer having provided Focus SB with Focus SB's delivery note number and such other information and documentation as Focus SB reasonably requires at the same time as the written information specified in Clause 5.6.1;
- 5.6.4 the Customer showing to Focus SB's reasonable satisfaction that the defect or damage is solely attributable to Focus SB's (or Focus SB's subcontractors') defective design, materials or workmanship and not: (a) wear and tear from normal use; or (b) the combination, incompatibility, attachment, affixation, incorporation or mixing of the

Products with any other goods, products, materials or substance; or (c) any installation, or other acts or omissions, by anyone after delivery;

- 5.6.5 the Products having not been: (a) misused or subjected to neglect, improper or inadequate care or carelessness (including being dropped or knocked); or (b) involved in any accident or attempt at repair, replacement, alteration, change or modification except by or on behalf of Focus SB or as approved by Focus SB or in accordance with Focus SB's instructions; or (c) dealt with or installed or used or stored contrary to good trade practice or any oral or written instructions, advice or recommendation of Focus SB (including ensuring that the Products were suitably checked before installing);
- 5.6.6 the Customer holding the Products safely and securely in good condition;
- 5.6.7 the Customer allowing and procuring for Focus SB (or Focus SB's representatives) the opportunity to have access to and inspect the Products;
- 5.6.8 the Customer having paid Focus SB on time and in full; and
- 5.6.9 if and to the extent Focus SB requests, at Focus SB's option, within five Business Days of the Customer informing Focus SB of the defective or damaged Products, Focus SB collecting such Products or the Customer returning such Products carriage and insurance paid at the Customer's risk to Focus SB's premises or such other location stipulated by Focus SB and carefully packed to avoid damage in transit. Unless and until Focus SB inspects, repairs or receives such Products, the Customer shall hold such Products safely and securely in good condition. Any returns shall be dealt with in accordance with Clause 6.5.
- 5.7 The warranty contained in this Clause 5 is specifically limited to the Customer. No warranty is made to any other person, whether subsequent buyer or user or customer, or to any bailee, licensee, assignee, employee, agent or otherwise.
- 5.8 If the Customer makes an invalid claim under the warranty, Focus SB may charge the Customer for its fees and costs of examining, testing, storing and replacing the Products and dealing with the claim and removing and delivering the Products.
- 5.9 Where the Products are supplied with a guarantee from the original manufacturer, Focus SB shall (where relevant and where possible) assign or transfer its own rights under that guarantee to the Customer or its customers.
- 5.10 To the extent that the Customer or its direct or indirect customers have a guarantee from the manufacturer of the Products, the Customer shall (and shall procure that its direct or indirect customers shall) fully exhaust all their rights and remedies under that guarantee before any claim is made against Focus SB under this Clause 5, and if that guarantee is reasonable the Customer shall have no greater or longer claim or right or remedy under this Clause 5 against Focus SB than is offered under that guarantee by the manufacturer.
- 5.11 Except where expressly provided for within this Contract, Focus SB excludes all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Products.

6. RETURNS AND CANCELLATION

- 6.1 Except for Clause 6.5 (which applies for any return permitted under this Contract, including under Clause 5.6.9), this Clause 6 applies in respect of Products which have been delivered in accordance with this Contract but where the Customer would like them to be returned to Focus SB.
- 6.2 At Focus SB's absolute discretion and subject to Clause 6.3 and any other conditions that Focus SB stipulates, Focus SB may accept the return of Products or the cancellation of this Contract (or part of it) by Customer, upon Customer paying a minimum re-stocking or cancellation fee of 30% of the Price for the cancelled Products. Subject to the Customer's compliance with Clause 6.3 and any other conditions that Focus SB stipulates, Focus SB shall return to the Customer the Price paid by the Customer for the Products less Focus SB's re-stocking or cancellation fee.
- 6.3 Focus SB will only accept returns or cancellation of Products in accordance with Focus SB's booking-in procedure as set out in this Clause 6.3. For any returns or cancellation of Products, the Customer shall contact Focus SB to obtain an authorised return booking-in reference number in writing from Focus SB, and return the Products to Focus SB's required return point within 20 Business Days of receipt of a booking-in reference number with the returns booking-in reference clearly marked on the outside of the packaging of the Products.
- 6.4 Focus SB will not, however, agree to the Customer cancelling this Contract or returning the Products under this Clause 6 if:
- 6.4.1 the Products have been damaged, modified or in any way changed or altered after Focus SB delivered them;
- 6.4.2 installation has commenced in respect of them;
- 6.4.3 the Products have been ordered or made specifically to Customer's order or requirements;
- 6.4.4 the boxes or packaging containing the Products are damaged or not full; or
- 6.4.5 the Products are in a form that makes it difficult to re-sell them without Focus SB incurring cost.

- 6.5 For any returns of Products, the Customer shall provide all information reasonably required by Focus SB with the returned Products, including the name and address of the Customer, quantity and full description of the Products, invoice number in respect of the Products, and the reason for the return.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 As between the Parties, Focus SB and its licensors shall retain ownership of all Intellectual Property Rights in the Specifications, whether or not any contain anything created or supplied in accordance with the Customer's instructions or requirements.
- 7.2 To the extent that the Customer is otherwise the owner, the Customer hereby assigns to Focus SB all the Customer's Intellectual Property Rights in the Specifications.
- 7.3 Focus SB grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, non-transferable, non-sub-licensable, royalty-free, perpetual and irrevocable licence to copy and modify the Specifications for the purpose of placing an Order and using the Products in the normal course of their intended use.
- 7.4 The Customer warrants that the receipt and use of any instructions or requirements of the Customer in the performance of this Contract by Focus SB shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 7.5 If either Party becomes aware of any improper or wrongful use of the Intellectual Property Rights owned or used by the other Party, that Party shall forthwith inform the other Party of such use. Each Party shall if requested assist the other Party (at the other Party's cost) in taking any steps in connection with the protection or defence of the Intellectual Property Rights owned or licensed by the other Party as the other Party may determine.

8. CONFIDENTIAL INFORMATION

- 8.1 Each Party shall keep and procure to be kept secret and confidential the Confidential Information of the other Party and shall not use nor disclose the same save:
- 8.1.1 for the purposes of the proper performance of this Contract; or
- 8.1.2 as otherwise permitted by this Contract; or
- 8.1.3 with the prior written consent of the other Party.
- 8.2 Where one Party discloses Confidential Information of the other Party to its employee, officer, director, consultant, contractor, agent, representative, customer, professional adviser or insurer, it shall do so on a need-to-know basis and subject to obligations equivalent to those set out in this Clause 8. Each Party shall use all reasonable endeavours to ensure that any such employee, officer, director, consultant, contractor, agent, representative, customer, professional adviser or insurer complies with such obligations.
- 8.3 The obligations of confidentiality in this Clause 8 shall not extend to any matter which either Party can show:
- 8.3.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Contract; or
- 8.3.2 was in its written records prior to receipt; or
- 8.3.3 was independently developed by it; or
- 8.3.4 was independently disclosed to it by a third party entitled to disclose the same.
- 8.4 If either Party is required to disclose the Confidential Information of the other Party under any applicable laws, or by order of a court or governmental body or authority of competent jurisdiction or to a regulator, then the Party so required may disclose the Confidential Information to the extent required but shall, prior to any disclosure where practicable and legally permissible, give the other Party as much warning thereof as practicable and inform in writing and consult with the other Party and, at the other Party's request and cost, fully co-operate with and assist that other Party in opposing any such disclosure.

9. LIABILITY

- 9.1 This Clause 9 prevails over all other Clauses and sets forth the entire Liability of Focus SB, and the sole and exclusive remedies of the Customer, in respect of:
- 9.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Contract or of any goods or services in connection with this Contract; or
- 9.1.2 otherwise in relation to this Contract or entering into this Contract.
- 9.2 Focus SB does not exclude or limit its Liability for:
- 9.2.1 its fraud; or
- 9.2.2 death or personal injury caused by its Negligence; or
- 9.2.3 any breach of the non-excludable obligations implied by law as to having title to supply goods; or
- 9.2.4 any other Liability which cannot be excluded or limited by applicable law.

- 9.3 Subject to Clause 9.2, Focus SB does not accept and hereby excludes any Liability for Negligence other than any Liability arising pursuant to the terms of this Contract.
- 9.4 Subject to the Clause 9.2, Focus SB shall not have any Liability in respect of any:
- 9.4.1 indirect or consequential losses, damages, costs or expenses;
 - 9.4.2 loss of actual or anticipated profits;
 - 9.4.3 loss of contracts;
 - 9.4.4 loss of use of money;
 - 9.4.5 loss of anticipated savings;
 - 9.4.6 loss of revenue;
 - 9.4.7 loss of goodwill;
 - 9.4.8 loss of reputation;
 - 9.4.9 ex gratia payments;
 - 9.4.10 loss of business;
 - 9.4.11 loss of operation time;
 - 9.4.12 loss of opportunity; or
 - 9.4.13 loss of, damage to or corruption of, data;
- whether or not such losses were reasonably foreseeable or Focus SB or its agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 9.4.2 to 9.4.13 apply whether such losses are direct, indirect, consequential or otherwise.
- 9.5 Subject to Clause 9.2, the total aggregate Liability of Focus SB in respect of the Contract shall be limited to the greater of: (a) £2,000; or (b) 110% of the total sums paid and total other sums payable, in aggregate, by the Customer to Focus SB pursuant to the relevant Contract.
- 9.6 The limitation of Liability under Clause 9.5 has effect in relation both to any Liability expressly provided for under this Contract and to any Liability arising by reason of the invalidity or unenforceability of any term of this Contract.
- 9.7 In this Contract:
- 9.7.1 "**Liability**" means liability in or for breach of contract (including liability under any indemnity), tort (whether deliberate or not), Negligence, breach of statutory duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Contract, including liability expressly provided for under this Contract or arising by reason of the invalidity or unenforceability of any term of this Contract (and for the purposes of this definition, all references to this "Contract" shall be deemed to include any collateral contract, but each Order shall constitute a separate "Contract"); and
 - 9.7.2 "**Negligence**" means the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty).

10. PRICE

- 10.1 The Customer shall pay to Focus SB the Price and other sums due under this Contract and by the times required.
- 10.2 Focus SB may apply a minimum charge for each Contract, so that the Price for the Products subject to that Contract in aggregate must equal or exceed a certain threshold set by Focus SB from time to time. Focus SB shall state the minimum order charge in the Quotation or otherwise in writing to the Customer.
- 10.3 Unless otherwise stipulated in any Quotation or any Long Term Agreement (or otherwise agreed between the Parties in writing):
- 10.3.1 Focus SB may issue an invoice to the Customer for the Price (or the relevant part) and other sums due in connection with the Price on or prior to delivery of the Products; and
 - 10.3.2 the Customer shall pay Focus SB in full prior to delivery of the Products.
- 10.4 Where Focus SB requires payment in advance of delivery of the Products, delivery of the Products is conditional on Focus SB first receiving the advanced payment in cleared funds in full.
- 10.5 Where Focus SB agrees in writing to extend credit to the Customer (which Focus SB may change in its absolute discretion by informing the Customer in writing with immediate effect from time to time), then unless otherwise agreed in writing between the Parties and subject to any credit limit that Focus SB has for the Customer (as updated by Focus SB informing the Customer in writing with immediate effect in its absolute discretion from time to time), the Customer shall pay Focus SB within 30 days of the date of invoice.
- 10.6 Focus SB may stipulate in writing a total credit limit for the Customer from time to time. If there are any amounts due or owing from the Customer (and any other customers associated with the Customer) to Focus SB under any agreement between them (including under this Contract) in aggregate in excess of the total credit limit, Focus SB may withhold delivery or making available for collection of Products until the Customer has paid such sum to Focus SB so as to reduce the amounts due or owing below the credit limit.

- 10.7 The Price and any other sums due under this Contract are exclusive of any value added tax or other sales, import and export duties or taxes (if applicable) which shall be payable in addition at the same time as payment of the Price and other sums due.
- 10.8 The Customer shall pay Focus SB by any payment method reasonably stipulated by Focus SB. No payments shall be by cash.
- 10.9 Unless otherwise stipulated in this Contract or agreed in writing between the Parties, payment shall be in the currency in force in England from time to time.
- 10.10 Payment shall be deemed made when Focus SB has received cleared funds in full.
- 10.11 Payment of all sums due to Focus SB under this Contract shall be made by the Customer in full without any set-off, deduction or withholding whatsoever.
- 10.12 If the Customer is late in paying any part of any monies due to Focus SB under this Contract or any other contract between the Parties, Focus SB may (without prejudice to any other right or remedy available to it whether under this Contract or by any statute, regulation or bye-law) do any or all of the following:
- 10.12.1 charge interest and claim other costs on the amount due but unpaid as permitted under the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly;
 - 10.12.2 sell or otherwise dispose of any Products which are the subject of any Contract, whether or not appropriated thereto, and apply the proceeds of sale to the overdue payment; and
 - 10.12.3 suspend the performance of this Contract and any other contract between the Parties until Focus SB has been paid in full.

11. TERM AND TERMINATION

- 11.1 This Contract shall commence when it becomes legally binding in accordance with Clause 2.8 and, unless terminated earlier by either Party exercising any right of cancellation or termination as set out in this Contract, shall continue in force until the later of:
- 11.1.1 the Customer having paid in full for all sums due under this Contract; and
 - 11.1.2 Focus SB having delivered all the Products to the Customer.
- 11.2 Either Party may terminate this Contract by giving notice in writing to the other Party with immediate effect if:
- 11.2.1 the other Party is in persistent breach of any of its obligations under this Contract or any other contract between the Parties; or
 - 11.2.2 the other Party is in material breach of any of its obligations under this Contract or any other contract between the Parties and such breach is incapable of remedy;
 - 11.2.3 the other Party fails to remedy, where capable of remedy, any material breach of any of its obligations under this Contract or any other contract between the Parties after having been required in writing to remedy such breach within a period of no less than 30 days; or
 - 11.2.4 the other Party 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 takes any similar or analogous step or action in consequence of debt in any jurisdiction;
 - 11.2.5 the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 11.2.6 the other Party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Contract is in jeopardy.
- 11.3 In any event, Focus SB may terminate this Contract by giving notice in writing to the Customer with immediate effect if the Customer is at least seven days late in paying any sum due under this Contract or any other contract between the Parties.
- 11.4 Termination or expiry of this Contract shall be without prejudice to any accrued rights or remedies of either Party.
- 11.5 Termination or expiry of this Contract will not affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 11.6 Upon termination or expiry of this Contract for any reason:
- 11.6.1 Focus SB shall cease to perform this Contract; and
 - 11.6.2 all outstanding sums shall become immediately payable, whether invoiced or not.

12. FORCE MAJEURE

- 12.1 Save for obligations in respect of payment of the Price, neither Party shall have any Liability for any breach, hindrance or delay in performance of its obligations under this Contract which is caused by any circumstances beyond

- its reasonable control including any act of God, actions or omissions of third parties not in the same group as the Party seeking to rely on this Clause 12 (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, seizure or forfeiture, breaking off of diplomatic relations or similar actions, national emergencies, actual or threatened or suspected terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, unusual traffic volumes, unusual travel restrictions, pandemic (including COVID-19), epidemic, fire, explosion, storm, flood, drought, adverse weather conditions (including cold, heat, wind, rain, snow, ice or fog), loss at sea, earthquake, volcano, ash cloud, natural disaster, accident, mechanical breakdown, third party software, collapse of building structures, failure of machinery (other than used by the relevant Party) or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation ("**Event of Force Majeure**"), regardless of whether the circumstances in question could have been foreseen.
- 12.2 Each Party agrees to inform the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 12.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.
- 12.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.
- 12.5 If there is an Event of Force Majeure which continues without a break for more than one month, either Party may terminate this Contract immediately by notice to the other, in which event neither Party shall have any Liability by reason of such termination.
- 12.6 Each Party shall use its reasonable endeavours to assist and co-operate with the other Party to mitigate the effects of an Event of Force Majeure, but neither Party shall be required to take steps that it would be unreasonable to expect it to take.
- 12.7 Should any performance of obligations be delayed under this Clause 12, each Party shall nevertheless accept performance as and when the other shall be able to perform.
- 12.8 If Focus SB has contracted to provide identical or similar products to more than one customer and is prevented from fully meeting its obligations to the Customer by reason of an Event of Force Majeure, Focus SB may decide at its absolute discretion which contracts it will perform and to what extent.
- 13. NOTICES**
- 13.1 Any notice required or authorised to be given under this Contract shall be in writing and shall be served by personal delivery or by a generally commercially recognised international express courier or (if both Parties are based in the United Kingdom) by recorded delivery to the relevant Party at its address stated in this Contract or at such other address as is notified by the relevant Party to the other Party for this purpose from time to time or at the address of the relevant Party last known to the other Party.
- 13.2 Any notice so delivered personally shall be deemed served at the time of delivery and any notice so given by international express courier or by recorded delivery shall be deemed to have been served two Business Days after the same shall have been despatched, and in proving such service it shall be sufficient to prove that the letter was properly addressed, and despatched and delivered.
- 14. USE OF INFORMATION**
- 14.1 Focus SB may use data collected about the Customer and the Customer's representatives for:
- 14.1.1 credit checks, credit searches, credit scoring, credit insurance and securitisation, and Focus SB may provide or exchange that information with third parties (including bankers and financiers) for that purpose;
- 14.1.2 administering the Customer's account and Contracts;
- 14.1.3 customer, product, market and statistical analysis and research; and
- 14.1.4 sending details of further products and services that Focus SB or its associated people or organisations are involved with.
- 14.2 Focus SB collects personal information about the Customer (where the Customer is an individual) or the Customer's employees and representatives during the course of performing this Contract and any after sales service in accordance with its privacy notice available at www.focus-sb.co.uk
- 15. ASSIGNMENT**
- 15.1 Subject to any assignee (in the case of an assignment) confirming in writing to be bound by the provisions of this Contract, Focus SB may assign, transfer, novate or subcontract its rights, liabilities or obligations under this Contract either in whole or in part to any other person, firm or company. Focus SB shall promptly give notice to Customer of any such assignment, transfer or novation.

- 15.2 Customer shall not (and shall not purport to) assign, transfer, novate, charge or otherwise encumber, create any trust over or deal in any manner with this Contract or any of its rights, liabilities or obligations under this Contract without the prior written consent of Focus SB (such consent not to be unreasonably withheld or delayed).
- 16. GENERAL**
- 16.1 Unless a Party expressly states in writing that it is waiving a particular power, right or remedy in a particular stated instance, no failure or delay or omission by either Party in exercising any power, right or remedy under this Contract or at law shall operate as a waiver of such power, right or remedy; and no waiver in any particular instance shall extend to or affect any other or subsequent event or impair any powers, rights or remedies in respect of it or in any way modify or diminish that Party's other powers, rights or remedies under this Contract or at law.
- 16.2 If any Clause or other provision of this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other Clause or provision or part of any Clause or provision, all of which shall remain in full force and effect.
- 16.3 The relationship of the Parties is that of independent contractors dealing at arm's length. Except as otherwise stated in this Contract, nothing in this Contract shall constitute the Parties as partners, joint ventures or co-owners, or constitute either Party as the agent, employee or representative of the other Party, or empower either Party to act for, bind or otherwise create or assume any obligation on behalf of the other Party, and neither Party shall hold itself out as having authority to do the same.
- 16.4 A person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.
- 16.5 The Customer is responsible for complying with any applicable government export control laws and regulations.
- 16.6 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or its formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England.
- 16.7 If both Parties are domiciled in the European Union or the United Kingdom, then subject to Clause 16.8, the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with this Contract or its subject matter or its formation (including non-contractual disputes or claims).
- 16.8 If both Parties are domiciled in the European Union or the United Kingdom, but as a consequence of any change in national or international law, judgments of the courts of England shall not be automatically enforceable in the jurisdiction in which the Customer is located, or such a change in law is planned or reasonably foreseeable, Focus SB shall have the right to commence and pursue arbitration proceedings against the Customer under the LCIA Rules to settle any claim, dispute or matter of difference which may arise out of or in connection with this Contract or its formation (including non-contractual disputes or claims). The LCIA Rules are deemed to be incorporated by reference into this Clause 16.8. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.
- 16.9 If one or more of the Parties is domiciled outside of the European Union and the United Kingdom, any claim, dispute or matter of difference which may arise out of or in connection with this Contract or its subject matter or its formation (including non-contractual disputes or claims) shall be exclusively referred to and finally resolved by arbitration under the LCIA Rules. Those Rules are deemed to be incorporated by reference into this Clause 16.9. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.
- 16.10 All dealings, correspondence and contacts between the Parties shall be made or conducted in the English language.

Version: January 2022