

The Dealer's attention is drawn, in particular, to the provisions of clause 9.

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following definitions apply:

AJS: AJS Motorcycles Limited (a company registered in England and Wales under company number 01409055).

Authorised Repairs: repairs to the Goods which AJS determines are necessary due to damage or defects: (i) covered by the warranty given by AJS to the Dealer under clause 5.1; (ii) covered by the End Customer Warranty; or (iii) which have caused AJS to issue a product recall in respect of the Goods.

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Conditions: the terms and conditions set out in this document (as may be amended from time to time in accordance with clause 11.6).

Confirmation of Order: a confirmation of an Order issued by AJS to the Dealer;

Contract: the contract between AJS and the Dealer for the sale and purchase of the Goods and consisting of the Order, the Confirmation of Order and these Conditions.

Dealer: the person who purchases the Goods from AJS.

End Customer: the Dealer's customer to whom the Goods, when fully assembled by the Dealer, are sold.

End Customer Warranty: the warranty given by AJS to the End Customer in respect of the Goods.

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

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

Handover Form: a handover form, supplied by AJS to the Dealer with the Goods, that the Dealer is required to complete and sign and then provide to the End Customer, containing important information relating to the ownership, usage and safe operation of the Goods.

Order: the Dealer's order for the Goods.

PDI: a pre-delivery inspection sheet comprising a check list of items to be tested and/or inspected by a skilled technician employed by the Dealer prior to any resale of the Goods.

Specification: the specification for the relevant Goods, as appearing on the Website (subject to minor detail changes which may be implemented by AJS or its supplier).

Trade Marks: the trade marks that AJS may, by advising the Dealer in writing, permit, or procure permission for, the Dealer to use in the United Kingdom in respect of the Goods.

Website: AJS's website at www.ajsmotorcycles.co.uk (or any replacement for that website).

1.2 In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 A reference to **writing** or **written** includes e-mails.

1.3 If there is any conflict or ambiguity between the terms of:

1.3.1 the Confirmation of Order;

1.3.2 these Conditions; or

1.3.3 the Order,

a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

2 BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Dealer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Dealer to purchase the Goods in accordance with these Conditions. The Dealer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Dealer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when AJS issues a Confirmation of Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Dealer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of AJS which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by AJS and any illustrations contained in AJS's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force. This is not a sale by sample.
- 2.6 A quotation for the Goods given by AJS shall not constitute an offer. A quotation shall only be valid for a period of twenty Business Days from its date of issue.

3 GOODS

- 3.1 The Goods are described in AJS's Specification contained on its Website, provided that both parties acknowledge and agree that AJS or its supplier may implement minor detail changes to the Goods as delivered when compared with the Specification on the Website.
- 3.2 AJS reserves the right to amend the Specification of the Goods if required by any applicable statutory or regulatory requirements.

4 DELIVERY

- 4.1 AJS shall ensure that:
 - 4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Dealer and AJS reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), any special assembly and/or storage instructions and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 4.1.2 if AJS requires the Dealer to return any packaging materials to AJS, that fact is clearly stated on the delivery note. The Dealer shall make any such packaging materials available for collection at such times as AJS shall reasonably request. Returns of packaging materials shall be at AJS's expense.
- 4.2 If AJS has agreed to make the Goods available for collection, the Dealer shall collect the Goods from AJS's premises at Unit 3, Balksbury Industrial Estate, Upper Clatford, Andover, Hampshire SP11 7LW (or such other premises as may be advised by AJS prior to delivery) within three Business Days of AJS notifying the Dealer that the Goods are ready.
- 4.3 Subject to clause 4.2, AJS shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (**Delivery Location**) at any time after AJS notifies the Dealer that the Goods are ready.
- 4.4 Subject to clause 4.7, delivery of the Goods shall be completed:
 - 4.4.1 if AJS has agreed to make the Goods available for collection, when the Dealer collects the Goods from the premises referred to in clause 4.2; and
 - 4.4.2 otherwise, on the Goods' arrival at the Delivery Location.
- 4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 4.6 If AJS fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Dealer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. AJS shall have no liability for any delay in delivery, or failure to deliver, the Goods to the extent that such delay or failure is caused by a Force Majeure Event or the Dealer's failure to provide AJS with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7 If the Dealer fails to take or accept delivery of the Goods within three Business Days of AJS notifying the Dealer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or AJS's failure to comply with its obligations under the Contract:

- 4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which AJS notified the Dealer that the Goods were ready; and
- 4.7.2 AJS shall store the Goods until delivery takes place, and charge the Dealer for all related costs and expenses (including insurance).
- 4.8 If ten Business Days after the day on which AJS notified the Dealer that the Goods were ready for delivery the Dealer has not taken or accepted delivery of them, AJS may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Dealer for any excess over the price of the Goods or charge the Dealer for any shortfall below the price of the Goods.
- 4.9 AJS may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Dealer to cancel any other instalment.

5 QUALITY

- 5.1 Subject to compliance by the Dealer with the condition set out in clause 5.7, AJS warrants that on delivery, and for a period of twelve months from the date of delivery (**Warranty Period**), the Goods shall:
 - 5.1.1 conform with their description and any applicable Specification;
 - 5.1.2 be free from material defects in design, material and workmanship; and
 - 5.1.3 be fit for any purpose held out by AJS.
- 5.2 Subject to clause 5.3, if:
 - 5.2.1 the Dealer gives notice in writing to AJS during the Warranty Period and:
 - (a) in the case of a defect that is apparent on normal visual inspection, within 5 Business Days of delivery; and
 - (b) in the case of a hidden defect, within a reasonable time of the latent defect having become apparent,that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - 5.2.2 AJS is given a reasonable opportunity of examining such Goods; and
 - 5.2.3 the Dealer (if asked to do so by AJS) returns such Goods to AJS's place of business at the Dealer's cost,AJS shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 AJS shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
 - 5.3.1 the Dealer makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Dealer failed to follow AJS's oral or written instructions as to the storage, commissioning, assembly, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 5.3.3 the Dealer alters or repairs such Goods without the written consent of AJS;
 - 5.3.4 the defect arises as a result of fair wear and tear, missed or late services, wilful damage, negligence, or abnormal storage, assembly or working conditions; or
 - 5.3.5 the Goods differ from their description or any applicable Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.If the Dealer has not given notice of any defects in the Goods within the relevant time period specified in clause 5.2.1(a) or (b), the Dealer shall be deemed to have accepted the Goods.
- 5.4 Except as provided in this clause 5, AJS shall have no liability to the Dealer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by AJS.
- 5.7 It is a condition of the Contract that the Dealer:

- 5.7.1 complies with any pre-delivery inspection and handover requirements notified to it by AJS; and
- 5.7.2 completes all applicable parts of, and signs, each PDI and Handover Form which AJS provides with the Goods, and returns the completed and signed PDI and Handover Form to AJS with all due speed and, in any event, within five Business Days of to the re-sale of the Goods by the Dealer to the End Customer (or such longer period as AJS agrees in writing).

The Dealer shall indemnify AJS against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by AJS in connection with any claim made against AJS arising out of or in connection with the Dealer's failure to comply with this clause 5.7.

- 5.8 At AJS's request, the Dealer shall carry out Authorised Repairs to the Goods purchased by the Dealer from AJS and, where appropriate, which have been sold by the Dealer to End Customers. AJS shall be responsible for the reasonable cost of parts and labour associated with the Authorised Repairs, provided that AJS may supply the Dealer with the necessary parts. The labour costs which AJS shall reimburse to the Dealer shall be calculated on the basis of: (i) an hourly rate determined by AJS (and being at least £25 net per hour); and (ii) a length of time to carry out the Authorised Repairs as agreed by AJS. A list of the maximum amounts of time which it should take a competent mechanic to carry out common Authorised Repairs is set out on AJS's Website.
- 5.9 AJS may require the Dealer to carry out Authorised Repairs, in accordance with clause 5.8, on Goods sold by the Dealer to End Customers:
 - 5.9.1 where those Authorised Repairs arise under the End Customer Warranty, throughout the life of the relevant End Customer Warranty;
 - 5.9.2 where those Authorised Repairs arise as a result of a product recall, throughout the life of the Goods,and even if the Dealer sold the Goods to an End Customer outside of the Dealer's immediate locality and even if the Dealer is no longer a reseller of AJS products.

6 TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Dealer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Dealer until:
 - 6.2.1 AJS receives payment in full (in cash or cleared funds) for the Goods and any other goods that AJS has supplied to the Dealer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; or, if earlier
 - 6.2.2 the Dealer resells the Goods, in which case title to the Goods shall pass to the Dealer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Dealer, the Dealer shall:
 - 6.3.1 store the Goods separately from all other goods held by the Dealer so that they remain readily identifiable as AJS's property;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.3 maintain the Goods in a satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.4 notify AJS immediately if it becomes subject to any of the events listed in clause 8.2; and
 - 6.3.5 give AJS such information relating to the Goods as AJS may require from time to time.
- 6.4 Subject to clause 6.5, the Dealer may resell or use the Goods in the ordinary course of its business (but not otherwise) before AJS receives payment for the Goods. However, if the Dealer resells the Goods before AJS receives payment for the Goods:
 - 6.4.1 the Dealer does so as principal and not as AJS's agent; and
 - 6.4.2 title to the Goods shall pass from AJS to the Dealer immediately before the time at which resale by the Dealer occurs.
- 6.5 If, before title to the Goods passes to the Dealer, the Dealer becomes subject to any of the events listed in clause 8.2, then, without limiting any other right or remedy AJS may have:
 - 6.5.1 the Dealer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

6.5.2 AJS may at any time:

- (a) require the Dealer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- (b) if the Dealer fails to do so promptly, enter any premises of the Dealer or of any third party where the Goods are stored in order to recover them.

7 PRICE AND PAYMENT

- 7.1 The price of the Goods shall be the price set out in the Confirmation of Order, or, if no price is quoted, the price set out in AJS's published price list in force as at the date of delivery.
- 7.2 AJS may, by giving notice to the Dealer at any time up to ten Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - 7.2.1 any factor beyond AJS's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing, transport and/or delivery costs);
 - 7.2.2 any request by the Dealer to change the delivery date(s), quantities or types of Goods ordered, or any applicable Specification; or
 - 7.2.3 any delay caused by any instructions of the Dealer or failure of the Dealer to give AJS adequate or accurate information or instructions.
- 7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Dealer.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax ('VAT'). The Dealer shall, on receipt of a valid VAT invoice from AJS, pay to AJS such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 AJS may invoice the Dealer for the Goods on, or at any time after, the completion of delivery.
- 7.6 Unless otherwise agreed in writing by AJS, the Dealer shall pay the invoice in full and in cleared funds within ten Business Days of the date of the invoice or, if earlier, on the date on which the Dealer resells the Goods in the ordinary course of its business. Payment shall be made in cleared funds to the bank account nominated in writing by AJS. Time of payment is of the essence.
- 7.7 If credit terms are approved by AJS and agreed upon in the Confirmation of Order, then the Dealer shall pay the amount of deposit agreed between the parties before delivery of the Goods. The balance of the price of the Goods shall be paid by the Dealer by monthly instalments of £180.00 (amount subject to change). If any part of the Goods is sold or transferred by the Dealer, the outstanding balance of the price for the sold or transferred Goods shall become due and payable immediately to AJS.
- 7.8 The issue by AJS of a V55/1 registration document or the performance by AJS of a "Register a Vehicle (RaV)" upload in respect of any Goods will only take place after full payment for those Goods has been received by AJS.
- 7.9 If the Dealer fails to make any payment due to AJS under the Contract by the due date for payment, then the Dealer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Dealer shall pay the interest together with the overdue amount.
- 7.10 The Dealer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). AJS may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Dealer against any amount payable by AJS to the Dealer.

8 TERMINATION AND SUSPENSION

- 8.1 If the Dealer becomes subject to any of the events listed in clause 8.2, AJS may terminate the Contract with immediate effect by giving written notice to the Dealer.
- 8.2 For the purposes of clause 8.1, the relevant events are:
 - 8.2.1 the Dealer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- 8.2.2 the Dealer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors (other than (where the Dealer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Dealer with one or more other companies or the solvent reconstruction of the Dealer);
 - 8.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Dealer, other than for the sole purpose of a scheme for a solvent amalgamation of the Dealer with one or more other companies or the solvent reconstruction of the Dealer;
 - 8.2.4 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Dealer;
 - 8.2.5 (being a company) the holder of a qualifying floating charge over the Dealer's assets has become entitled to appoint or has appointed an administrative receiver;
 - 8.2.6 a person becomes entitled to appoint a receiver over the Dealer's assets or a receiver is appointed over the Dealer's assets;
 - 8.2.7 (being an individual) the Dealer is the subject of a bankruptcy petition or order;
 - 8.2.8 a creditor or encumbrancer of the Dealer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 8.2.9 any event occurs, or proceeding is taken, with respect to the Dealer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.8 (inclusive);
 - 8.2.10 the Dealer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - 8.2.11 the Dealer's financial position deteriorates to such an extent that in AJS's opinion the Dealer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - 8.2.12 (being an individual) the Dealer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 Without limiting its other rights or remedies, AJS may suspend provision of the Goods under the Contract or any other contract between the Dealer and AJS if the Dealer becomes subject to any of the events listed in clause 8.2.1 to clause 8.2.12, or AJS reasonably believes that the Dealer is about to become subject to any of them, or if the Dealer fails to pay any amount due under this Contract on the due date for payment.
- 8.4 On termination of the Contract for any reason the Dealer shall immediately pay to AJS all of AJS's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9 LIMITATION OF LIABILITY

- 9.1 Nothing in these Conditions shall limit or exclude AJS's liability for:
- 9.1.1 death or personal injury caused by AJS's proven negligence;
 - 9.1.2 fraud or fraudulent misrepresentation;
 - 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 9.1.4 defective products under the Consumer Protection Act 1987; or
 - 9.1.5 any other matter in respect of which it would be unlawful for AJS to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- 9.2.1 AJS shall under no circumstances whatever be liable to the Dealer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

9.2.2 AJS's total liability to the Dealer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

10 FORCE MAJEURE

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

11 GENERAL

11.1 Assignment and other dealings

11.1.1 AJS may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11.1.2 The Dealer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of AJS.

11.2 Notices

11.2.1 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or commercial courier.

11.2.2 A notice shall be deemed to have been received:

- (a) if delivered personally, when left at the address referred to in clause 11.2.1;
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 a.m. on the second Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

11.2.3 The provisions of this clause 11.2 shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance

11.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.4 Non-waiver

11.4.1 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

11.4.2 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

11.4.3 No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 Third party rights

A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

11.6 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by AJS.

11.7 Governing law

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

11.8 Jurisdiction

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any Dispute.

12 TRADE MARKS

12.1 AJS grants to the Dealer the non-exclusive right, in the United Kingdom, to use the Trade Marks in the promotion, advertisement and sale of the Goods, subject to, and for the duration of, this Contract and for so long as the Dealer sells the Goods to End Customers. The Dealer acknowledges and agrees that all rights in the Trade Marks shall remain in Supplier, and that the Dealer has and will acquire no right in them by virtue of the discharge of its obligations under this Contract, except for the right to use the Trade Marks as expressly provided in this Contract.

12.2 The Dealer shall market and sell the Goods only under the Trade Marks, and not in association with any other trade mark, brand or trade name, except as permitted in any branding manual issued by AJS.

12.3 All representations of the Trade Marks that the Dealer intends to use shall be submitted to AJS for written approval before use.

12.4 The Dealer shall comply with all rules for the use of the Trade Marks issued by AJS and shall not, without the prior written consent of AJS:

12.4.1 alter or make any addition to the labelling or packaging of the Goods displaying the Trade Marks;

12.4.2 make any addition or modifications to the Goods or to any advertising and promotional materials supplied by AJS; or

12.4.3 alter, deface or remove any reference to the Trade Marks, any reference to AJS or any other name attached or affixed to the Goods or their packaging or labelling.

12.5 AJS makes no representation or warranty as to the validity or enforceability of the Trade Marks nor as to whether they infringe any intellectual property rights of third parties in the Territory.

12.6 The Dealer shall not sub-license, assign, transfer, charge, or otherwise encumber the right to use, reference, or designate the Trade Marks to any other party, except as otherwise expressly permitted under this Contract.

12.7 The Dealer shall not do, or omit to do, anything in its use of the Trade Marks that could adversely affect their validity or reputation.

12.8 The Dealer shall immediately on request enter any further agreements with AJS, in a form satisfactory to AJS, necessary for the recording, registration or safeguarding of AJS's Trade Mark rights for the marketing of the Goods under the Trade Marks.

12.9 Each party shall promptly give notice in writing to the other if it becomes aware of:

12.9.1 any infringement or suspected infringement of the Trade Marks or any other intellectual property rights relating to the Goods within the United Kingdom; or

12.9.2 any claim that any Product or the manufacture, use, sale or other disposal of any Product within the Territory, whether or not under the Trade Marks, infringes the rights of any third party.

12.10 In respect of any matter that falls within clause 12.9.1:

12.10.1 AJS shall in its absolute discretion, decide what action to take in respect of the matter (if any);

- 12.10.2 AJS shall conduct and have sole control over any consequent action that it deems necessary; and
- 12.10.3 AJS shall pay all costs in relation to that action and shall be entitled to all damages and other sums that may be paid or awarded as a result of that action.
- 12.11 In respect of any matter that falls within clause 12.9.2:
 - 12.11.1 AJS and the Dealer shall agree:
 - 12.11.1.1. what steps to take to prevent or terminate the infringement; and
 - 12.11.1.2. the proportions in which they shall share the cost of those steps and any damages and other sums that may be awarded to or against them; and
 - 12.11.2 failing agreement between the parties, either party may take any action as it considers necessary or appropriate, at its own expense, to defend the claim and shall be entitled to and responsible for all damages and other sums that may be recovered or awarded against it as a result of that action.
- 12.12 Each party shall, at the request and expense of the other, provide any reasonable assistance to the other (including the use of its name in, or being joined as a party to, proceedings) with any action to be taken by the other party under this clause 12, provided that that party is given such indemnity as it may reasonably require against any losses, costs and expenses it may incur as a result of, or in connection with, providing such assistance.
- 12.13 AJS alone is responsible for the registration and maintenance of any marks or designs that relate to the Goods. The Dealer shall not obtain or try to obtain or register for itself anywhere in the world any trade marks or trade names the same as, or similar to, the Trade Marks.
- 12.14 The Dealer shall not use the Trade Marks as part of the name under which the Dealer conducts its business, or any connected business, or under which it sells or services any products (except the Goods), or in any other way, except as expressly permitted under this agreement.
- 12.15 Upon termination of this Contract for any reason or upon request from AJS, the Dealer will immediately stop using all or any part of the Trade Marks.