

BA DISTRIBUTORS INC DBA SNG BARRATT USA

TERMS AND CONDITIONS - SUPPLY OF GOODS AND/OR SERVICES

1. DEFINITIONS

1.1 When the following words with capital letters are used in these Terms, this is what they will mean:

"Business Day" means a day (other than a Saturday, Sunday or a public holiday) when banks in Manchester, New Hampshire are open for business;

"Branch" means the premises location as notified by Us to you from time to time, which for present purposes shall be BA Distributors Inc., 92 Londonderry Turnpike, Manchester, New Hampshire 03104;

"Collection Location" is defined in clause 5.2;

"Confidential Information" means all information which is disclosed by Us or by you to the other however conveyed, whether before or after the date of the Contract, and would appear to a reasonable person to be confidential and which relates to the business affairs of the Discloser (as defined at clause 15.1), including (without limitation) trade secrets, know-how, design rights, market opportunities, personnel, customers and suppliers of the Discloser and all information derived from the above, together with the existence or provisions of the Contract and the negotiations relating to it;

"Contract" means the contract between you and Us for the supply of Goods and/or Services in accordance with these Terms;

"Delivery Location" is defined in clause 5.2;

"Deposit" is defined in clause 4.7;

"Discloser" is defined in clause 16.1;

"Due Date" is defined in clause 8.5;

"Event Outside Our Control" is defined in clause 12.2;

"Exchanged Goods" is defined in clause 4.7;

"Goods" means the goods that We are selling to you as set out in the Order;

"Goods Specification" means any specification for the Goods, including any relevant plans or drawings, that is agreed by you and Us;

"Insolvency" means in relation to you, any of the following (as relevant): (a) an assignment by you for the benefit of your creditors; (b) an admission by you of your inability to pay your debts as they become due; (c) a filing by you of a voluntary petition in bankruptcy, including any filing under the United States Bankruptcy Code or any similar federal or state statute; (d) an adjudication of bankruptcy or insolvency of you; (e) the filing by you of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation,

dissolution or similar relief under any present or future applicable law pertinent to such circumstances; (f) the filing by you of any answer admitting or not contesting the material allegations of a bankruptcy, insolvency or similar petition filed against you; (g) seeking or consenting to, or acquiescing in, the appointment of any trustee, receiver, or liquidator; (h) the commencement of an action against you seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future applicable law; or (i) the appointment, without your consent or acquiescence, of any trustee, receiver or liquidator of you or of all or any substantial part of your assets and properties, and "**Insolvent**" will be interpreted accordingly;

"**IPRs**" means patents, registered trade marks, registered designs, applications and rights to apply for any of those rights; unregistered trade marks, copyrights (including, where applicable, applications and rights to apply for registration of copyright and rights in computer software), topography rights, database, moral rights, know-how, Confidential Information, rights in designs and inventions; trade, business and company names, internet domain names and email addresses; the goodwill attaching to any of the above rights; and any forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world;

"**Order**" means your order whether made verbally, in writing or otherwise (including, without limitation, online or by using Our website), for the supply of Goods and/or Services, or your acceptance of Our quotation whether made verbally, in writing or otherwise (including, without limitation, online or by using Our website), as the case may be;

"**Recipient**" is defined in clause 16.1;

"**Service Specification**" means the description or specification for the Services, including any relevant plans or drawings, that is agreed by you and Us;

"**Services**" means the services that We are providing to you as set out in the Order as set out in the order.

"**Special Order Goods**" means as defined in clause 4.5;

"**Terms**" means the terms and conditions set out in this document;

"**Warranty**" is defined in clause 3.1;

"**Warranty Period**" is defined in clause 3.1; and

"**We/Our/Us**" means BA Distributors Inc., a New Hampshire corporation with New Hampshire business identification number 299781.

- 1.2 When We use the words "**writing**" or "**written**" in these Terms, this will include e-mail unless We say otherwise.
- 1.3 When We use the word "**you**" or "**your**" in these Terms We refer to the party who is purchasing Goods or Services from Us.
- 1.4 When We use the word "**consumer**" in these Terms in relation to you, We refer to where you are a natural person acting for purposes outside of your trade, business or profession. When We use the word "**business**" in relation to you, We refer to where you are acting for the purposes of your trade, business or profession.

1.5 When We use the phrase "**distance contract**" in relation to your Contract where you are a consumer, We refer to a Contract for Goods and/or Services which has been entered into without you being physically in Our presence and using Our system for making such Contracts by way of Orders placed by telephone, by e-mail, using Our website, by letter or using any other recognised form of distance communication.

2. OUR CONTRACT WITH YOU

2.1 These are the Terms on which we supply Goods and/or Services to you.

2.2 An Order is an offer by you to purchase Goods and/or Services in accordance with these Terms. Please ensure that you read these Terms carefully, and check that the details in the Order and in these Terms are complete and accurate, before you submit the Order. If you think that there is a mistake, please contact Us to discuss, and please make sure that you ask Us to confirm any changes in writing to avoid any confusion between us.

2.3 When you submit an Order to Us, whether or not We issue an acknowledgment of your Order, this does not mean We have accepted your order for Goods and/or Services. Our acceptance of the Order will take place as described in clause 2.4. If We are unable to supply you with the Goods and/or Services, We will inform you of this and We will not process the Order.

2.4 These Terms will only become binding on you and Us when We accept your Order. The Order for Goods shall only be deemed to be accepted by Us when the Goods are dispatched for delivery to you or the Goods are collected by you or your agent or, if earlier, the date on which We notify you that the Goods are ready for delivery or collection at which time, the Contract shall come into existence. There shall be no Contract between us until this time regardless of any provision of the Uniform Commercial Code to the contrary. The Order for Services shall only be deemed to be accepted by Us when We issue a written acceptance of the Order at which point and on which date the Contract shall come into existence.

2.5 If any of these Terms conflict with any term of the Order, these Terms will take priority.

2.6 Any quotation given by Us shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.7 All of these Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.8 This clause 2.8 only applies if you are a business

2.8.1 You confirm that you have authority to bind any business on whose behalf you contact Us to place an Order.

2.8.2 These Terms and any document expressly referred to in them constitutes the entire agreement between you and Us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.

2.8.3 You acknowledge that in placing your Order and in entering into the Contract you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms or any document expressly referred to in them.

2.8.4 You and We agree that neither of us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

2.8.5 These Terms apply to the contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. STANDARDS FOR THE GOODS

3.1 We guarantee that on delivery and for a period of 12 months from delivery of the Goods ("**Warranty Period**"), the Goods shall be free from material defects ("**Warranty**"). However, the Warranty will not apply in the circumstances described in clause 3.2.

3.2 The Warranty does not apply to any defect in the Goods arising from:

3.2.1 fair wear and tear;

3.2.2 wilful damage, abnormal storage or working conditions (including racing, rallying, sprinting, hill climbing or other motorsport or non-road use), accident, negligence by you or by any third party;

3.2.3 failure to operate or use the Goods in accordance with the user instructions;

3.2.4 any alteration or repair by you or by a third party;

3.2.5 any specification provided by you;

3.2.6 incorrect fitting or installation;

3.2.7 failure to follow our or the manufacturer's instructions or recommendations as to fitting, installation, use, maintenance, storage, or (if there are none) good practice;

3.2.8 a fault to the vehicle to which the Goods are fitted or installed; or

3.2.9 any attempt by you to rectify or repair the Goods.

3.3 The Goods are described in the Order as modified by any applicable Goods Specification. The images of the Goods on our website and in our catalogues are for illustrative purposes only. Although we have made every effort to display the Goods accurately, your Goods may vary slightly from those images.

3.4 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by you, you shall indemnify us 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 us in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with our use of the Goods Specification. This clause shall survive termination of the Contract.

3.5 We reserve the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

4. YOUR RIGHT TO RETURN THE GOODS

Returning materially defective Goods

- 4.1 These clauses 4.1 and 4.2 set out your right to return any Goods which we have delivered to you (whether you are a consumer or a business) which do not comply with the Warranty during the Warranty Period.
- 4.2 If you contact us and inform us, within a reasonable time of discovering the same, that the Goods delivered to you do not comply with the Warranty, and you are still within your Warranty Period, then we will (at our sole discretion) either repair or replace the defective Goods, or refund the price of the defective Goods in full (together with any applicable delivery charges, and any reasonable costs you incur in returning the item to us). When you contact us, you will need to ensure that you complete the "Return Application Form" (details of which are available on our website www.sngbarratt.com). However, before we repair / replace your Goods or give you a refund:
- 4.2.1 you (if asked to do so by us) must return such Goods to us, or if they cannot be returned and delivered to us, provide us with detailed photographic evidence of the alleged defect. If we have offered to collect the Goods from you, we will collect the Goods from the address to which they were delivered. We will contact you to arrange a suitable time for collection; and
- 4.2.2 we (and/or our suppliers) must be given a reasonable opportunity to examine such Goods to verify any defects (and such defects must in fact be verified). We may deduct from your refund any reduction in the value of the Goods as a result of you having Ordered the Goods, or the Goods having been in your possession.

Returning non-materially defective Goods

- 4.3 These clauses 4.3 and 4.4 set out your right to return any Goods which we have delivered to you (whether you are a consumer or a business) for any reason, save that this right shall not apply to Special Order Goods or Exchange Goods.
- 4.4 If, within 45 days of the date of delivery of the Goods, you contact us and inform us you wish to return the Goods for any reason, then we will refund the price of the Goods in full (though you will be responsible for all costs of returning the Goods to us). When you contact us, you will need to ensure that you complete the "Return Application Form" (details of which have been made available to you on our website or which was provided to you at the time we accepted your Order). However, before we give you a refund:
- 4.4.1 you must return such Goods to us, without undue delay and in any event not later than 14 days after the day on which you let us know that you wish to return the Goods. If we have offered to collect the Goods from you, we will collect the Goods from the address to which they were delivered. We will contact you to arrange a suitable time for collection; and
- 4.4.2 we (and/or our suppliers) must be given a reasonable opportunity to examine such Goods to verify that such Goods have not been returned with any defects.

Special Order Goods

- 4.5 Certain Goods are not kept in stock by us, but rather are Goods which need to be specially procured when an Order is received by us ("**Special Order Goods**"). Special Order Goods

include, without limitation, goods that are made to specifications supplied by you. We will, as a matter of good practice, attempt to inform you when you are ordering a Special Order Good, though this may not always be practical.

- 4.6 Under no circumstances (unless there is a defect) will you be able to cancel your Order or return the Special Order Goods, and you will not be entitled to any refunds. In the event that you attempt to cancel your Order for any Special Order Goods you will remain liable for (and will immediately pay us) the full price of the Special Order Goods.

Exchanged Goods

- 4.7 We may sell Goods to you at a reduced price on condition that you supply equipment for reconditioning to us ("**Exchanged Goods**"). We may take a deposit from you ("**Deposit**") to secure a later delivery of the Exchange Goods and/or to cover the situation where the Exchanged Goods are not complete or cannot be economically reconditioned.
- 4.8 Subject to clause 4.9, and you having completed the appropriate returns form(s), on the 30th Business Day after the Exchanged Goods are delivered to us by you, we shall return the Deposit but if the Exchanged Goods are not delivered within 40 Business Days of the Contract coming into existence, you will automatically forfeit the Deposit and we will keep it, and you will no longer be required to send us the Exchanged Goods.
- 4.9 On or within a reasonable period of delivery of the Exchanged Goods to us, and if, acting reasonably, we consider the Exchanged Goods to not be complete or that such goods cannot be economically reconditioned, we may, by giving notice to you, retain the Deposit and return the Exchanged Goods to you.

5. TITLE, RISK, AND DELIVERY OF GOODS

- 5.1 An invoice or delivery note showing the date of the Order, all relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and any special storage instructions will:
- 5.1.1 be provided by email (usually on the date the Goods are dispatched); and/or
- 5.1.2 accompany each delivery of the Goods.
- 5.2 We shall deliver the Goods to the location set out in the Order or such other location as you and we may agree ("**Delivery Location**") unless it is agreed that you shall collect the Goods, in which case you shall collect the Goods from the Branch or such other location as may be advised by us before delivery ("**Collection Location**") after we notify you that the Goods are ready for collection.
- 5.3 Delivery of the Goods shall be completed on the arrival of the Goods at the Delivery Location or collection of the Goods from the Collection Location by you or your agent.
- 5.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by an Event Outside our Control or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5 If we fail to deliver all of the Goods, you must tell us within 24 hours. We shall have no liability for failure to deliver the part of the Goods not delivered unless you inform us of this failure within 24 hours of delivery of the part of the Goods delivered.

- 5.6 If you fail to accept or take delivery of the Goods or fail to collect the Goods within 5 Business Days of us notifying you that the Goods are ready for delivery or collection, then except where such failure or delay is caused by our failure to comply with our obligations under the Contract in respect of the Goods, we shall store the Goods until delivery takes place, and charge you for all related costs and expenses (including insurance).
- 5.7 If, 20 Business Days after we notified you that the Goods were ready for delivery or collection, you have not accepted or taken delivery of or such Goods, we may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to you for any excess over the price of the Goods or charge you for any shortfall below the price of the Goods.
- 5.8 We 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 you to cancel any other instalment.
- 5.9 References in the Terms to delivery of Goods shall where the context permits include collection of Goods.

The following clauses 5.10 and 5.11 only apply if you are a consumer

- 5.10 The Goods will be your responsibility from the completion of delivery or from when you collect the Goods from us.
- 5.11 You own the Goods once we have received payment in full.

The following clauses 5.12 and 5.13 only apply if you are a business

- 5.12 The risk in the Goods shall pass to you on completion of delivery but title to the Goods shall not pass to you until we have received payment in full (in cash or cleared funds) for:
- 5.12.1 the Goods; and
- 5.12.2 any other goods that we have supplied to you in respect of which payment has become due.
- 5.13 Until title to the Goods has passed to you, you shall:
- 5.13.1 hold the Goods on a fiduciary basis as our bailee;
- 5.13.2 store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
- 5.13.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 5.13.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery; and
- 5.13.5 give us such information relating to the Goods as we may require from time to time, but you may resell or use the Goods in the ordinary course of your business.
- 5.14 Before title to the Goods passes to you, provided the Goods have not been resold or irrevocably incorporated into another product, and without limiting any other right or remedy we may have,

we may at any time require you to deliver up the Goods and, if you fail to do so promptly, enter any premises of yours or of any third party where the Goods are stored in order to recover them.

- 5.15 As collateral security for the payment of the purchase price of the Goods, you hereby grant to Us a lien on and security interest in and to all of the right, title and interest of you in, to and under the Goods, wherever located, and whether now existing or arising in the future or acquired from time to time, and in all accessions, replacements or modifications of the same, as well as all proceeds (including insurance proceeds) of the same. The security interest granted under this provision constitutes a purchase money security interest under the New Hampshire Uniform Commercial Code.

6. STANDARDS FOR THE SERVICES

- 6.1 We will provide the Services to you in accordance with the Service Specification in all material respects, and will use reasonable endeavours to meet any performance dates for the Services specified in the Contract (though any such dates shall be estimates only and time shall not be of the essence for the performance of the Services).
- 6.2 We will also ensure that the Services will be provided using reasonable care and skill.
- 6.3 We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and we shall notify you in any such event.
- 6.4 We will need your co-operation and certain information from you that is necessary for us to provide the Services, for example, complete and accurate details in your Order and the Service Specification (if applicable). We will contact you about this and any further information we may require. If you do not co-operate with us or, after being asked by us, provide us with this information, or you provide us with incomplete or incorrect information, we may make an additional charge of a reasonable sum to cover any extra work that is required, or we may suspend the Services by giving you written notice. We will not be liable for any delay or non-performance where you have not co-operated with us or provided this information to us after we have asked. If we suspend the Services under this clause 6.4, you do not have to pay for the Services while they are suspended, but this does not affect your obligation to pay for any invoices we have already sent you.
- 6.5 We may have to suspend the Services if we have to deal with technical problems, or to make improvements agreed between you and us in writing to the Services. We will contact you to let you know in advance where this occurs, unless the problem is urgent or an emergency. You do not have to pay for the Services while they are suspended under this clause 6.5; but this does not affect your obligation to pay any invoices we have already sent you.
- 6.6 If you do not pay us for the Services when you are supposed to as set out in clause 8, we may suspend the Services with immediate effect until you have paid us the outstanding amounts. We will contact you to tell you this. This does not affect our right to charge you interest under clause 8.5.

7. YOUR RIGHT TO CANCEL THE SERVICES

Cancelling materially defective Services

- 7.1 These clauses 7.1 and 7.2 set out your right to cancel any Services which we are providing to you (whether you are a consumer or a business) for any reason.

- 7.2 If, during the provision of the Services, you contact us and inform us you wish to cancel the Services because the Services are not being provided in accordance with the Service Specification in all material respects, or because reasonable care and skill is not being used to provide the Services, then we will (at our sole discretion) either repair or fix any defect (free of charge), or refund the amount paid for the part of the Services that are defective. However, before we repair/ fix the Services or give you a refund we (and/or our suppliers) must be given a reasonable opportunity to examine the output of such Services to verify whether it meets the Service Specification or is otherwise reasonably error-free.

Cancelling non-materially defective Services

- 7.3 These clauses 7.3 and 7.4 set out your right to cancel any Services which we are providing to you (whether you are a consumer or a business) for any reason.
- 7.4 If, within 45 days of the commencement of the Services, you contact us and inform us you wish to cancel the Services for any reason, then we will refund any payment you have made to us for that part of the Services which have not yet been performed. However, you will remain liable to pay us the full price for Services that we have performed which are not defective, and we will be entitled to make any deductions necessary from amounts you have already paid us for Services that have been properly performed.

8. PRICE AND PAYMENT

- 8.1 Subject to clauses 8.2 and 8.3 (if applicable), the price for Goods and/or Services shall be the price set out in the Order or, if no price is quoted, the price set out on our website as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall also be as set out in the Order or, if not so quoted, as set out on our website and which shall be paid by you when you pay for the Goods.
- 8.2 In the case of Services being the reconditioning or repair of goods, and if the price for the Services is given to you before inspection by us of the goods to be reconditioned or repaired, the price given is provisional only and may be subject to change by notice to you. If such a revised price is given to you but is not acceptable, you may cancel the Contract by giving notice to us within 3 Business Days of the revised price being supplied to you. If no revised price is given to you within 5 Business Days of inspection, the provisional price shall be the price for the Services.
- 8.3 Unless you are a consumer, if you make payments by credit card, we will charge you a surcharge equal to the charge we incur for accepting credit card payments, plus 2% of the purchase price of the Goods and/or Services.
- 8.4 We shall invoice you on or at any time after the Contract comes into existence. If you are a consumer, our invoice shall be payable immediately. Our credit terms for our invoices if you are in business are 30 days from the date of invoice. You shall pay each invoice in full and cleared funds to a bank account that we nominate. Notwithstanding the foregoing, where credit or debit card details have been provided to us in advance by you, we will charge the credit or debit card at the time of dispatch of the Goods for delivery or making them available for collection or completion of the Services, as the case may be. Time for payment shall be of the essence in the Contract.
- 8.5 Without limiting any other of Our rights or remedies, if you fail to make any payment due to Us under the Contract by the due date for payment ("**Due Date**"), We shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current United States prime rate as reported by The Wall Street Journal's bank survey accruing on a

daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

- 8.6 If you order Goods for delivery outside of the United States, your Order may be subject to import duties and taxes which are applied when the Goods reach their destination(s) outside of the United States. Please note that We have no control over these charges and We cannot predict their amount. You will be responsible for payment of any such import duties and taxes. You must comply with all applicable laws and regulations of the country for which the Goods are destined. We will not be liable or responsible if you break any such law. You shall comply with all export and import laws of all countries involved in the sale of the Goods hereunder or any resale of the Goods by you, as applicable and permitted. You assume all responsibility for shipments of Goods requiring any government import clearance. We may terminate the Contract if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.
- 8.7 If you are a business you shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.
- 8.8 Without limiting our other rights or remedies, we shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between you and us if you fail to pay any amount due under the Contract on the due date for payment.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 You shall not acquire any right in or to any of the IPRs subsisting in, resulting from or relating to any Goods and/or Services provided by us, or any documents, drawings and/or specifications which:
- 9.1.1 are supplied by us to you in connection with the Goods and/or Services, or
- 9.1.2 result from the production of the Goods and/or the provision of the Services,
- unless otherwise expressly agreed by us in writing. If, for any reason, you do in any way acquire any such rights then you hereby assign such rights to us.
- 9.2 Where the Goods are not manufactured by us, we give no assurance or guarantee that the sale or use of the Goods will not infringe the IPRs of any third party.

10. OUR LIABILITY TO YOU

- 10.1 Subject to clause 10.4:
- 10.1.1 In no event shall we be liable to you or any third party for any loss of use, revenue or profit, or loss of data or diminution in value, or for any consequential, indirect, incidental, special, exemplary, or punitive damages whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such damages were foreseeable and whether or not seller has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.

- 10.1.2 In no event shall our aggregate liability arising out of or related to the contract, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed 100% of the price of the goods and/or services as the case may be.
- 10.2 Except for the representations and warranties expressly set forth in these terms, we make no warranty whatsoever with respect to the goods or services, including, without limitation, any warranty of merchantability, warranty of fitness for a particular purpose, warranty of title, or warranty against infringement, whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise.
- 10.3 We are not responsible for any loss or damage due to your failure to fulfil your responsibilities under clause 3.2 (i.e. to check that the Goods are the correct part for any vehicle to which you intend to fit or install the Goods and to ensure the Goods are fitted or installed with due care and skill). We also shall not be liable for a breach of any warranty set forth herein if:
- 10.3.1 you make any further use of such Goods after giving notice of a defect;
- 10.3.2 the defect arises because you failed to follow Our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or
- 10.3.3 you alter or repair the Goods without Our prior written consent.
- 10.4 We do not exclude or limit in any way Our liability for:
- 10.4.1 death or bodily injury caused by Our acts or omissions; or
- 10.4.2 liability resulting from Our gross negligence or willful misconduct.
- 11. CLAUSE 10 OF THESE TERMS SHALL SURVIVE TERMINATION OF THE CONTRACT**
- 12. EVENTS OUTSIDE OUR CONTROL**
- 12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by an Event Outside our Control.
- 12.2 An Event Outside our Control means any act or event beyond our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, malicious damage, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private utility, telecommunications or transport networks or (where beyond our control) accident, breakdown of plant or machinery or default of suppliers or sub-contractors.
- 12.3 If an Event Outside our Control takes place that affects the performance of our obligations under these Terms:
- 12.3.1 we will contact you as soon as reasonably possible to notify you; and

12.3.2 our obligations under these Terms will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside our Control. Where the Event Outside our Control affects our delivery of Goods to you, we will arrange a new delivery date with you after the Event Outside our Control is over. Where the Event Outside our Control affects our performance of Services to you, we will restart the Services as soon as reasonably possible after the Event Outside our Control is over.

13. OUR CANCELLATION RIGHTS

13.1 Before we begin to provide the Services or the Goods are despatched for delivery or collected, we have the right to cancel an Order for Goods and/or Services. If we have to cancel an Order we will promptly contact you and to the extent you have made any payment in advance, we will refund these amounts to you.

13.2 Without affecting any of our other rights, we may immediately terminate the Contract and demand payment of any amount due or accruing to us whether under the Contract or otherwise, re-sell the Goods and/or withhold or cancel any deliveries of Goods if any of the following occurs or is likely to occur:

13.2.1 you do not pay us when you are supposed to. This does not affect our right to charge you interest under these Terms; or

13.2.2 you are in breach of any of your obligations under the Contract and, if such breach is capable of remedy, you do not remedy the breach within 4 days of receiving written notice from us asking you to do so; or

13.2.3 you are, or become, Insolvent; or

13.2.4 your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy; or

13.2.5 an Event Outside our Control continues for longer than 2 weeks.

13.3 We shall also have the right at any time and for any reason to terminate the Contract in whole or in part by giving you 7 days' written notice. On such termination, all work on the Contract shall be discontinued and we shall deliver as soon as reasonably possible to you any Goods and/or Services which are work-in-progress at the time of termination.

13.4 All payments payable to us under the Contract shall become due immediately on its termination notwithstanding any other provisions of the Contract. Further, the clauses within these Terms which expressly or impliedly have effect after termination shall continue to be enforceable after termination.

14. INFORMATION ABOUT US AND HOW TO CONTACT US

14.1 We are a corporation incorporated in the State of New Hampshire. Our New Hampshire business identification number is 299781. We operate the website www.sngbarratt.com. Our principal business address is 92 Londonderry Turnpike, Manchester, New Hampshire 03104.

14.2 If you have any questions or if you have any complaints, please contact Us. You can contact Us by telephoning Our customer service team at +1 800-452-4787 or by e-mailing Us at sales.usa@sngbarratt.com

Clause 14.3 only applies if you are a consumer

- 14.3 If you wish to contact us in writing, or if any clause in these Terms requires you to give us notice in writing (for example, to cancel the Contract), you can contact us as described in clause 14.1. We will confirm receipt of this by contacting you in writing. If we have to contact you or give you notice in writing, we will do so by e-mail, by hand, or by pre-paid post to the address you provide to us in the Order.

Clauses 13.4 13.5 and 13.6, only apply if you are a Business

- 14.4 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number, or sent by email to the other party's main email address.
- 14.5 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the 2nd Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax or by email, on the next Business Day after transmission.
- 14.6 Clauses 13.4 and 13.5 shall not apply to the service of any proceedings or other documents in any legal action.

15. HOW WE MAY USE YOUR PERSONAL INFORMATION

- 15.1 We will use the personal information you provide to us to:
- 15.1.1 provide the Goods and/or Services;
 - 15.1.2 process your payment for such Goods and/or Services; and
 - 15.1.3 if you expressly consent to the same, inform you about similar products or services that we provide. You may ask us to stop using your personal information for this purpose at any time by contacting us.
- 15.2 We will not give your personal data to any other third party.

16. CONFIDENTIAL INFORMATION

This clause 16 only applies if you are a business

- 16.1 Subject to clause 15.2, for the duration of the Contract and for a period of 3 years following termination or expiry of the Contract, when either we or you are receiving Confidential Information ("**Recipient**") from the other ("**Discloser**"), the Recipient shall keep that information confidential and comply with this clause 16. In particular, the Recipient shall:
- 16.1.1 use the Discloser's Confidential Information solely for the purposes of fulfilling its obligations under the Contract;
 - 16.1.2 keep the Discloser's Confidential Information secure and take no lesser security measures and degree of care to protect the Discloser's Confidential Information than the Recipient applies to its Confidential Information; and

- 16.1.3 not disclose the Discloser's Confidential Information to any third party except with the prior written consent of the Discloser or in accordance with this clause 16.
- 16.2 The obligations of confidentiality set out in this clause 16 shall not apply:
- 16.2.1 where the Discloser has given its specific prior written consent to the disclosure;
- 16.2.2 to Confidential Information which at the date of the Contract is, or becomes at any time after that date, within the public domain (other than as a result of a breach of this clause 16);
- 16.2.3 where disclosure is a requirement of any law, regulation, binding judgment, order or requirement of any court or other competent authority or regulatory body (and in each case clause 16.3 shall then apply);
- 16.2.4 where the Recipient can show that the information was obtained, free from any restrictions as to its use or disclosure, from a third party (provided that such third party was not under any confidentiality obligations which prevented it from disclosing such information); and
- 16.2.5 where the information was developed by, or for, the Recipient independently of any information received under the Contract and by persons who had no access to, or knowledge of, that information.
- 16.3 Disclosure under clause 15.2.3 shall (unless such notice or consultation is prohibited) only be made after prior consultation with the Discloser as to the terms, content or timing of disclosure and to the person or persons and in the manner required by the law, regulator or authority, or as otherwise agreed between you and us.

17. ANTI-BRIBERY

This clause 17 only applies if you are a business

- 17.1 We confirm that we have, and will at all times implement, adequate procedures designed to prevent us from engaging in any activity which would constitute an offence under the Bribery Act 2010. You confirm the same on your behalf.
- 17.2 We confirm that, in connection with the Contract, no improper financial or other advantage has been, will be or is agreed to be given to any person (whether working for or engaged by either of you or us or any third party) by or on behalf of us. You confirm the same on your behalf.

18. MODERN SLAVERY AND HUMAN TRAFFICKING

This clause 18 only applies if you are a business

- 18.1 We are committed to ensuring that We and all of Our suppliers and employees are in compliance with the terms and spirit of modern slavery legislation. A copy of Our most recent Slavery and Human Trafficking statement is available on Our website.
- 18.2 We will not engage in behaviours that breach the terms of any modern slavery legislation in any form. You will not engage in any such behaviour either. All of Our activities are managed in full compliance with this legislation, and We expect all businesses with whom We contract to likewise comply with the same.

19. HEALTH AND SAFETY

This clause 19 only applies if you are a business

- 19.1 You shall within 21 days of receipt of a request by Us complete and return to Us a written undertaking confirming that you will take specified steps sufficient to ensure so far as is reasonably practical that the Goods and Services supplied by Us will not, when incorporated into your own business activities and operations, present any risk to health when properly used.
- 19.2 The Goods and Services shall not be regarded as being properly used for the purposes of clause 19 above where they are used without regard to any relevant information or advice relating to their use provided by Us to you.

20. OTHER IMPORTANT TERMS

- 20.1 We may transfer or subcontract Our rights and obligations under these Terms to another organization but this will not affect your rights or Our obligations under these Terms. If you are a business We may also assign, charge or deal in any other manner with Our rights under the Contract.
- 20.2 The Contract is between you and Us and you shall not, without Our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under the Contract. No other person shall have any rights to enforce any of its terms.
- 20.3 Each of the paragraphs of these Terms operates separately. If any term or provision of these Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 20.4 If We fail to insist that you perform any of your obligations under these Terms, or if We do not enforce Our rights against you, or if We delay in doing so, that will not mean that We have waived Our rights against you and will not mean that you do not have to comply with those obligations. No single or partial exercise of Our rights shall restrict the further exercise of that right or any other remedy. If We do waive a default by you, We will only do so in writing, and that will not mean that We will automatically waive any later default by you.
- 20.5 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law or at equity. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Contract.
- 20.6 Nothing in these Terms, or under the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between you and Us or any employment or fiduciary relationship between you and Us, nor constitute any party the agent of the other for any purpose. Neither you nor Us shall have authority to act as agent for, or to bind, the other in any way.
- 20.7 A Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to its conflicts of laws principles. The provisions of the United Nations Conventions on Contracts for the International Sale of Goods shall not apply to this Contract.

20.8 Both you and We agree that the state and federal courts of the State of New Hampshire will have exclusive jurisdiction over any legal suit, action, or proceeding arising out of or relating to these Terms and the Contract and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding (including non-contractual disputes or claims) and agrees not to assert, by way of motion, as a defense, or otherwise, that it is not subject personally to the jurisdiction of such court or that there it is an inconvenient forum. Both you and we waive all right to trial by jury for all legal proceedings of any kind arising from or relating to these terms or any contract.