1. Interpretation

1.1 In these terms and conditions the following expressions will have the following meanings and cognate expressions will be construed accordingly:

“Seller” KEMPER (U.K.) Limited
“Buyer” the person(s) or entity who place an Order.
“Goods” the goods or articles subject to the Order.
“Conditions” the terms and conditions set out here which govern the sale and purchase between the Buyer and Seller.
“Order” the order placed by the Buyer with the Seller for the supply of the Goods.
“Contract” the contract of sale concluded by the placing of an Order which is accepted by the Seller in its confirmation of Order.

2. Scope of Contract

2.1 Neither the Buyer nor the Seller will be bound by any variation, waiver or of addition to the Conditions except as agreed by both parties in writing.

2.2 Any terms and conditions used by the Buyer in the course of its business do not apply to the Contract.

2.3 No statement or representation made at any time prior to the Contract will be a term of the Contract or deemed to be an inducement or collateral contract pursuant to which the Buyer entered into the Contract.

3. Delivery

3.1 Delivery of the Goods will be made at the Buyer’s earliest convenience. Any time or date for delivery is an estimate only and may be cancelled or revised at the Seller’s option. Time for delivery by the Seller is not of the essence of the Contract.

3.2 Each delivery operates as a separate contract.

3.3 The Buyer will accept delivery of the Goods provided such delivery is made at the Buyer’s place of business within usual business hours or at any place agreed between the Seller and Buyer.

3.4 The Seller will not be liable to the Buyer for any loss or damage suffered directly or indirectly by the Buyer from any delays in delivery however arising.

3.5 The Seller will have no liability to the Buyer in the event of non-delivery of the whole or any portion of the Goods caused directly or indirectly by Act of God, elements, war, act of Government, strikes or lockouts, strike, breakdown of machinery, non-delivery or delay in delivery by the Seller’s suppliers of the Goods or materials required for the production of the Goods by the Seller or the Seller’s contractors to execute their deal in executing any work on the Goods or any other cause (whether or not the same as the foregoing) beyond the Seller’s control.

3.6 If delivery is delayed due to any of the causes referred to in clause 3.5 by a period in excess of three months the Seller may cancel the undelivered portion of the Contract by written notice.

3.7 Delivery of the Goods will be ex-works; if requested by the Buyer, the Seller will arrange delivery and insurance of the Goods in transit at the Buyer’s expense.

4. Payment and Price

4.1 The price stated in the Seller’s quotation does not include delivery to the Buyer’s premises. Such price excludes all tax, licence fee, custom, import or export duty or charge.

4.2 The Seller’s prices are valid for three months from the date of the Seller confirming the Order. After such period, the Seller may alter its prices and quotations for the Goods whenever in its absolute discretion considers necessary so that the Contract price is that in force at delivery. The Seller will give the Buyer seven days written notice or such alteration. If the Buyer objects to the alteration, the Buyer will be treated as discharged from the Contract.

4.3 Payment of the price of the Goods will be made net in Pounds Sterling within 30 days of the date the Buyer receives the Seller’s invoice; such invoice being sent by first class post to its address last known to the Seller or on the Seller if it is left at or sent by first class post to its address last known to the Buyer. It will be assumed that any notice sent by post will be delivered on the fifth working day after posting.

4.4 The Buyer will not assign its rights under the Contract without the prior written consent of the Seller.

5. Inspection

5.1 The Buyer will inspect the Goods immediately they are delivered and the signature of the Buyer by any person acting on its behalf on the delivery note will be deemed to be an acknowledgement by the Buyer that the Goods are of satisfactory quality, undamaged and in accordance with the Contract and the Seller will not replace the Goods not in accordance with the Contract or deliver any missing part, unless the Buyer:

5.1.1 states on the delivery note that the Goods or part of them are either damaged or missing; and
5.1.2 notifies the Seller in writing within five days of the delivery of the Goods of the extent to which the Goods are damaged and/or missing or in the case of latent defects which could not reasonably be revealed by the delivery inspection, such notification must be made within 6 months of the date risk in the Goods passed to the Buyer.

6. Risk

6.1 The risk in the Goods passes to the Buyer upon despatch of the Goods by the Seller for delivery to the Buyer in accordance with these Conditions.

7. Title

7.1 The Seller will retain title to and ownership to the Goods until the Buyer has paid in full the price of the Goods.

7.2 Furthermore, the title in the Goods will not pass to the Buyer unless and until the full price of any other delivered Goods the subject of any other business transaction between the Buyer and the Seller has been paid. Such price and the price of the Goods will in clause 7 together be called “the value” and will where the context permits include in addition any costs of representation incurred under clause 7.4.1.

7.3 Until the value has been received by the Seller the Buyer will hold the Goods as bailee on behalf of the Seller and the Buyer acknowledges that there is a fiduciary relationship in respect of the Goods between the Buyer and Seller accordingly:

7.3.1 the Buyer will store the Goods on its premises separately from its own goods or those of any other person in such a way that they can be readily identified as the Goods of the Seller;

7.3.2 until full payment is made the Buyer will take all necessary measures for the protection of the Goods including their insurance against all usual risks with an insurance company approved by the Seller for the full replacement value of the Goods. The Buyer will procure that the interest of the Seller is noted upon any such insurance policy and that a copy of the policy is supplied to the Seller on its creation;

7.3.3 the Buyer is authorised by the Seller to agree to sell on the Goods at a price which is no less than the purchase price of the Goods under the Contract subject to the express condition that the entire proceeds of sale are held in trust for the Seller and are not mingled with other monies or kept in an account in which money is kept for any other person or thing. The Buyer will keep records (to be produced to the Seller whenever required) of the name and address of any such sub-buyer and the date and contract price of each delivery and will if the Buyer so requires in writing assign such claims as the Buyer has against such subbuyers as arise from this transaction.

7.4 If the Buyer (a) fails to make any payment to the Seller when due, or (b) being an individual, proposes to compound with its creditors, applies for an interim order under section 252 Insolvency Act 1989 or has a bankruptcy petition presented against it or being a company, enters into voluntary or compulsory liquidation, has a receiver, an administrator or a similar receiver appointed over all or any part of its assets, threatens to go into liquidation, or suffers similar action, or if the Seller has reasonable cause to believe that any of these events is likely to occur then the Seller will have the right, without prejudice to any other remedies:

7.4.1 to enter, without prior notice, any premises of the Buyer where Goods owned by the Seller may be and to repossession and dispose of any Goods owned by the Seller so as to discharge any sums owed to it by the Buyer under this or any other contract;

7.4.2 to require the Buyer not to resell or part with possession of any Goods owned by the Seller until the Buyer has paid in full all sums due to the Seller under this or any other contract;

7.4.3 to withhold delivery of any undelivered Goods and stop any Goods in transit;

7.4.4 to vary by notice in writing with immediate effect the terms, if any, as to credit specified in the Contract between the Seller and Buyer in such manner as the Seller may, in its absolute discretion, determine;

7.5 Each of the preceding clauses will be construed and take effect separately and in the event of one or more such clauses being held ineffective this will not affect the validity of the remaining clauses.

8. Warranties

8.1 The Seller warrants that it has title to the Goods or will have such title at the time when property in the Goods is to pass to the Buyer under the Contract and waives that in all other respects it is able to satisfy its obligations to the Buyer under Section 12 of the Sale of Goods Act 1979.

8.2 Except as expressly stated in these Conditions all warranties and conditions whether express or implied by statute usage of trade or otherwise relating to the quality or nature of the Goods or their life or wear or fitness for any particular purpose or use under any specific conditions are expressly excluded.

8.3 Measurements, dimensions, weights, colours and other details contained in the Seller’s price lists and the Seller’s samples constitute only an approximate guide and do not form part of the Contract.

9. Liability

9.1 Any Goods alleged by the Buyer to be damaged or not of satisfactory quality will not form the subject of any claim for work done by the Buyer or for loss or damage sustained as a result of the Buyer taking any action in connection with the Goods.

9.2.1 No claim under clause 9.1 will be considered by the Seller unless, in addition to the Buyer’s compliance with clause 5 (inspection), the Buyer makes the Goods available for collection by the Seller.

9.2.2 No Goods will be accepted for return without the prior agreement of the Seller and returned Goods must be properly and securely packed by the Buyer and accompanied by a detailed list giving the reasons for their return and the date and number of the Seller’s invoice.

9.3 Except in respect of personal injury or death, the limit of the Seller’s liability under the Conditions will not exceed the price of undelivered Goods or Goods accepted back by the Seller under the terms of the Conditions and the Seller will under no circumstances be liable in contract or tort or otherwise for any indirect or consequential damage, loss or expense however caused whether to the Buyer or any other person or thing, whether arising directly or indirectly from the negligence of the Seller or anyone for whom the Seller is vicariously liable.

10. General

10.1 The Seller will not be affected by any delay or failure in exercising or any partial exercising of its rights under the Contract unless it has signed an express written waiver or release.

10.2 The Buyer will not assign its rights under the Contract without the prior written consent of the Seller.

10.3 Any notice given under the Conditions will be duly served on the Buyer if it is left at or sent by first class post to its address last known to the Seller or on the Seller if it is left at or sent by first class post to its address last known to the Buyer. It will be assumed that any notice sent by post will be delivered on the fifth working day after posting.

10.4 This Contract will be constructed in accordance with the laws of England and the Seller and Buyer submit to the non-exclusive jurisdiction of the English courts.