

## **SPIRIT FIRES LTD - CONDITIONS OF SALE [Registered No 6115228]**

### **1. Definitions**

- 1.1. In these Conditions the following words shall have the following meanings:
- 1.2. "Buyer" means either a Consumer Buyer or a Business Buyer more particularly defined in these Conditions.
- 1.3. "Consumer Buyer" means a consumer being defined as a person acting outside of the course of a business (more specifically defined under s.12 Unfair Contract terms Act 1977).
- 1.4. "Business Buyer" means any person, body of persons, firm, company, stockist or export partner with whom the Company enters into a contract for the sale of Goods by the company who is not a Consumer Buyer or a person given a Trade Discount.
- 1.5. "Trade Discount" where a person who claims to be a Business Buyer is given a discount on Goods from the Company.
- 1.6. "Company" means Spirit Fires Limited having its principal place of business at Unit 4 Beaumont Square, Durham Way South, Aycliffe Industrial Park, County Durham, DL5 6XN, including any of its divisions or subsidiaries.
- 1.7. "Goods" means the fire displays or other products from time to time supplied or sold to the Buyer by the Company, either independently or as part of the Services as contained in Addendums to these conditions.
- 1.8. "Bespoke" means a fireplace which has been designed or custom made for a buyer that is not within our standard range of products.
- 1.9. "Non-returnable Items" means components of the Purchased Fireplace by their very nature cannot be returned
- 1.10. "Made to Order" means a fireplace manufactured for the Buyer requiring the purchase of special materials not stocked by the Company.

### **2. Applicable Conditions**

- 2.1. This contract is subject to these Conditions which shall be deemed to be incorporated into any contract between the Company and the Buyer. Any amendment to these Conditions shall not form part of this contract unless agreed in writing between the parties.

### **3. Quotations**

- 3.1. A quotation by the Company does not constitute an offer and the Company may withdraw or revise a quotation at any time prior to the Company's acceptance of the Buyer's order.
- 3.2. Unless otherwise stated all prices quoted shall be deemed to be withdrawn 30 days after the date of quotation.

### **4. Acceptance of Order**

- 4.1. The Company's acceptance of the Buyer's order (including telephone orders) shall only be effective, and the contract deemed to come into existence, where such acceptance is given to the Buyer in writing on the Company's headed note paper (Order Acknowledgement).
- 4.2. On acceptance of an Order the Company shall:
  - 4.2.1. email or fax the Buyer with confirmation details of the order and a copy of the Company Terms and Conditions.
  - 4.2.2. also send via post the Order Acknowledgement confirming the full details of the Goods purchased in the contract with a further copy of the Company Terms and Conditions.
  - 4.2.3. The Buyer has a 7 day period from the date stated on the Order Acknowledgement to check that the Goods as detailed are correct and read the terms and conditions forming the contract.
  - 4.2.4. Unless contacted by the Buyer, after this 7 day period has expired it is agreed that the contract is correct and the Company will proceed with purchasing any made to order materials required to fabricate the Goods.
  - 4.2.5. After this 7 day period it is deemed that the contract is correct in all respects and any errors found after the delivery of the Goods will be at the Buyer's cost.

### **5. Description**

- 5.1. The description and illustrations of the Goods given to the Buyer, or contained in the Company's catalogues, brochures, price list and other advertising materials, are intended to present a general idea of the Goods only, they will not form part of the contract unless specifically agreed in writing by the Company.
- 5.2. The Company shall endeavour to supply Goods which match the specification or description of the Goods provided at the time of acceptance of the order.
- 5.3. The Buyer acknowledges that if the Goods contain natural or naturally derived products and which are individually produced then the appearance, colour or detail of the Goods may vary from the original specifications and whilst the Company shall endeavour to ensure that any variations are kept to minimum it accepts no liability thereof nor shall the Buyer be entitled to terminate this contract.
- 5.4. The Buyer accepts that Limestone or Travertine, if included in the Goods is a natural stone that by its very nature includes fossils and variations. The Company will not accept any claims from the Buyer due to the appearance, colour, density, frequency and variations of these naturally occurring fossils in the delivered limestone or travertine.
- 5.5. The Company may from time to time, substitute any materials or component parts of a quality equivalent or superior to that originally specified.
- 5.6. The Company reserves the right to make any changes in the specification to the Goods which are required to ensure that the Goods conform to any applicable safety or other statutory requirements.

### **6. Prices**

- 6.1. Unless the parties agree to another currency in writing all prices shall be calculated and paid in pounds sterling.
- 6.2. Prices quoted to the Buyer are inclusive of VAT.
- 6.3. The Buyer will be responsible for the payment of all other relevant taxes which will be payable thereto.
- 6.4. All rates, prices and discounts quoted to the Buyer or published in the Company's catalogues, lists and other documents are subject to variation at any time prior to acceptance of the Buyer's order by the Company.
- 6.5. The Company reserves the right, by giving written notice to the Buyer at any time before delivery of the Goods (or during delivery where the contract is being performed in stages or over a period of time), to increase the price of Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company.
- 6.6. The Company will endeavour to minimise all price increases, which it passes on to the Buyer.

### **7. "Bespoke", "Made to Order" Goods and Balanced Flue Fires**

- 7.1. An Order from the Buyer for Goods which are classified on the Order Acknowledgement as "Bespoke", "Made to Order" or "Balanced Flue" are sold to the Buyer inline with the special terms of contract as detailed below:
  - 7.1.1. **Bespoke Goods**
    - 7.1.1.1. The Company will not accept an order for Bespoke Goods until the Buyer has signed or confirmed in writing that the relative drawings and specification is correct and in line with the Buyer's requirements.
    - 7.1.1.2. Any requested amendments to the Bespoke Goods once manufacturing has started will be at the Buyer's cost as determined by the Company providing a revised quotation.
    - 7.1.1.3. Where a contract is entered into with a Buyer for Bespoke Goods the Goods are sold on a non-cancellation basis once delivered.
    - 7.1.1.4. Where the Buyer requests cancellation in writing to the Company prior to the delivery of the Goods, the Buyer will lose 75% of the agreed sales price to cover the costs to the Company for designing and manufacturing the Bespoke Goods.

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### **7.1.2. Made to Order Goods**

- 7.1.2.1. Some items listed within the CVO Brochure and Pricelist are classified as Made to Order Goods. These fireplaces which include materials that are purchased and manufactured by the Company specifically for the Buyers order are sold on a non-cancellation basis.
- 7.1.2.2. The Buyer accepts all responsibility for Made to Order Goods once an order acknowledgement has been raised.

### **7.1.3. Balanced Flue fires**

- 7.1.3.1. The items listed within the CVO Brochure and Pricelist classified as Balanced Flue fires include materials that are purchased and manufactured by the Company specifically for the Buyers order and are thus sold on a non-cancellation basis.
- 7.1.3.2. The Buyer accepts all responsibility for the Balanced Flue Fire purchase once an order acknowledgement has been raised.

## **8. Cancellation for the Consumer Buyer**

- 8.1. To exercise your right of cancellation you must give written notice by post, email or fax, giving details of goods ordered. The Company will not accept any cancellation requests via telephone.
- 8.2. For Bespoke, Made to Order Goods and Balanced Flue Fires see Section 7 for the special terms relating to these Goods.
- 8.3. Due to the nature of the materials used, purchased Goods made from natural limestone and Travertine cannot be returned or cancelled
- 8.4. For all other Goods sold outside the terms set out in Section 8.2 and Section 8.3 sold to the Consumer Buyer after viewing the products in a Showroom or at a Trade Fair:
  - 8.4.1. If the goods have not been delivered:
    - 8.4.1.1. Spirit Fires Limited reserves the right to decide the level of refund based on costs incurred up to a maximum of 50%.
  - 8.4.2. If the goods have already been delivered :
    - 8.4.2.1. the Consumer Buyer will arrange for the return of the goods in the original packaging to the address as shown on this document.
    - 8.4.2.2. the cost of return will be at the Consumer Buyer's cost and the Consumer Buyer agrees to Insure the shipment against damage.
    - 8.4.2.3. the Consumer Buyer has a statutory duty of care to ensure the goods arrive at the Company in perfect condition.
    - 8.4.2.4. upon receipt of the goods at the Company, after inspection the Company reserves the right to make a restocking charge of 50% of the original contract value.
- 8.5. For all other Goods sold outside the terms set out in Section 8.2 and Section 8.3 and Section 8.4 and sold over the telephone, according to The Consumer Protection (Distance Selling) Regulations 2000 in the unlikely event that you are not satisfied with your purchase for any reason, the Consumer Buyer has the right to cancel their order within 7 working days from the day after the date of delivery.
  - 8.5.1. the consumer Buyer has a statutory duty of care for the goods.
  - 8.5.2. the Consumer Buyer will arrange, at the Consumer Buyer's cost, to return the goods to the Company with 30 days of receipt of the Goods.
  - 8.5.3. the Consumer Buyer agrees to exercise care for the Goods and to ensure the goods are insured against transport damage.
  - 8.5.4. the Consumer Buyer agrees to pack the goods back in the original packaging and return the goods to the Company at the Consumer Buyer's cost
  - 8.5.5. If the goods are returned damaged the Company will advise the Consumer Buyer so that a claim can be made against the transport Company. Upon receipt of any payment of damages the Company agrees to refund the balance of the contract value.
  - 8.5.6. Upon receipt of the Goods in perfect condition the Company will refund the Consumer Buyer within 30 days.
  - 8.5.7. If the Goods are not returned to the Company in perfect condition the Company will claim against the Consumer Buyer any loss for damages reserved for breach of the Buyer's statutory duty of care.

## **9. Cancellation for the Business Buyer**

- 9.1. A contract entered into with a Business Buyer can be done so with or without a Trade Discount.
- 9.2. This Trade Discount is given, following discussions with the Buyer, where the Buyer has indicated to the Company that they are acting for or are a Business Buyer.
- 9.3. All cancellation requests must be made in writing either via email, letter or fax. The Company will not accept any cancellation requests via telephone.
- 9.4. Products made from natural limestone cannot be returned or cancelled.
- 9.5. For Bespoke, Made to Order and Balanced Flue fires see Section 7 for the Cancellation Terms
- 9.6. If a Business Buyer wishes to cancel an order outside the Terms in 9.5 before delivery has taken place, the Company will charge 50% of the Order Value to cover costs.
- 9.7. If a Business Buyer wishes to cancel an order after the goods have been delivered the Company will not accept cancellation.

## **10. Business Buyer Responsibility**

- 10.1. It shall be the responsibility of the Business Buyer to ensure that:
  - 10.1.1. the Goods are suitable in dimension and design to fit within the property of the ultimate third party purchaser.
  - 10.1.2. the Goods are fitted with the requisite degree of care and skill by the Business Buyer's qualified agents or employees and that the Buyer fully complies with all applicable statutory and industry standards currently in force in relation to the Goods.
  - 10.1.3. In the event of the Business Buyer becoming aware of any problem with the Goods that the Business Buyer promptly provides the Company with a written report of the problem including full details of the Goods and Invoice number.
  - 10.1.4. the Company will not accept any correspondence with the ultimate third party purchaser when a contract has been entered into with a Business Buyer.

## **11. Consumer Buyer Responsibility**

- 11.1. It shall be the responsibility of the Consumer Buyer to ensure that the Goods are suitable in dimension and design to fit within the property of the purchaser. The Company makes available all technical drawings and technical requirements' of the Goods prior to purchase.

## **12. Payment**

- 12.1. upon acceptance of the order as defined in clause 3 the Buyer will pay:
  - 12.1.1. Unless a separate payment agreement is made in writing prior to order, the Company a minimum of 50% non-refundable deposit of the total price of the Goods and Services at the time of placing the order.
  - 12.1.2. The balance must be paid within 7 days before delivery or collection.
- 12.2. Subject to clause 12.1 above, the Company may require the Buyer to pay for all the Goods at the time the order is placed.
- 12.3. Payment must be made when due, notwithstanding that ownership in the Goods has not passed to the Buyer.
- 12.4. Where any account is overdue for payment the Company shall be entitled to charge interest at the rate of 5% per annum over the Bank base rate in force from time to time, on the amount due from the due date for payment until the date of actual payment (including interest) both before and after any judgement.
- 12.5. It is the Buyer's responsibility to ensure that all balance payments are made 7 days prior to the estimated delivery date.
- 12.6. An administration fee will be applicable at the Company's discretion for the use of credit cards for payment of goods.

## **13. Retention of Title and Lien**

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- 13.1. Ownership in the Goods shall not pass from the Company to the Buyer until one of the following events occurs:
  - 13.1.1. the Company is paid for all the Goods and placed in clear funds, that no other amounts are owed by the Buyer to the Company, including any interest charges, have been paid in full and the Company has delivered the Goods to the Buyer's property.
  - 13.1.2. the Buyer sells the Goods in accordance with these Conditions in which case the ownership in the Goods will pass to the Buyer immediately before the Goods are delivered to the Buyer's customer.
- 13.2. Until such time as ownership in the Goods passes to the Buyer, the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company, or its employees or agents, and, if the Buyer fails to do so, forthwith to enter upon any property of the Buyer or any third party where the Goods are stored and to repossess the Goods, and the Buyer grants the Company an irrevocable licence to the Company to do so.

### **14. Delivery and Insurance**

- 14.1. The Company will notify the Buyer in writing of the estimated week commencing date on which the Goods will be ready to be despatched, (Primarily by stating product production "lead times") which is activated upon confirmation of the order. In accordance with Section 8, the Company will not accept any delays in delivery due to non payment of balance. It is the responsibility of the buyer to ensure prompt payment is made.
- 14.2. In the event that the Buyer requests the Company to make early delivery of the Goods on a date prior to that quoted to the Buyer in the notice set out in clause 14.1 then the Company shall be entitled to charge the Buyer a sum equal to 0.5% per day of the total sales price chargeable for each full day upon which the Goods are delivered early.
- 14.3. The Company will endeavour to abide by any delivery dates or periods quoted to the Buyer. The Buyer accepts that any dates quoted by the Company to the Buyer are estimates only and the Company shall not be liable for delays in delivery, which are outside of the Company's control. In the event of a delay in delivery the Company will provide the Buyer with reasonable notice of the delay.
- 14.4. Delivery of the Goods shall take place:
  - 14.4.1. in the event that the Company undertakes delivery of the Goods, when the Goods are unloaded from the Company's or the Company's agents or subcontractor's transport at an address specified by the Buyer. There is a delivery charge for this. There will also be a crating charge if this is required.
  - 14.4.2. in the event that the Buyer undertakes to uplift Goods, when the Goods are loaded onto the Buyer's transport at the Company's premises.
- 14.5. Notwithstanding that ownership in the Goods has not passed subject to clause 13, the risk of loss, damage or destruction of the Goods shall pass to the Buyer on delivery in accordance with clause 14.3.
- 14.6. The Buyer must insure the Goods against all insurable risks for the price due to the company for the Goods.
- 14.7. The Company shall be under no obligation to give to the Buyer the notice referred to in Section 32(3) of the Sale of Goods Act 1979.
- 14.8. The Company may elect to deliver the Goods in instalments. The Company's decision to deliver by instalments will be notified to the Buyer at the time of sale.
- 14.9. In accordance with Section 12, the Company will not accept any delays in delivery due to non payment of balances.
- 14.10. If the Buyer fails to take delivery of the Goods (or any part(s) thereof) on the date notified for delivery, or to give adequate instructions to enable the Goods to be delivered on the date notified for delivery, the Company may issue a written notice to the Buyer stating that the risk in the Goods shall be deemed to have passed to the Buyer on the date delivery was due. Thereafter the Company shall store the Goods at the Buyer's expense and risk (the estimated cost of storage to be the Company's reasonable costs and to be notified to the Buyer in the aforementioned notice) for 21 days. After 21 days the Company shall the option (at its own discretion) of treating the contract with the Buyer as terminated. Following receipt of the written notice, the Buyer shall be liable to pay the Company in respect of all losses, costs and expenses incurred by the Company arising as a result of the Buyer's failure or breach.

### **15. Quality and Non Delivery**

- 15.1. The Buyer shall be given a 48 hour period from the moment of delivery to examine the Goods and to satisfy itself that they conform to the contract. If the buyer elects to not check the goods upon delivery then once this 48 hour period has passed it is agreed by both parties that the Goods conform to the contract.
- 15.2. A claim within this 48 hour period that Goods are not in accordance with the contract will not be accepted by the Company unless verbal or written notice [fax, letter or email] is provided, and the Buyer must:
  - 15.2.1. specify the alleged default.
  - 15.2.2. state what is required of the Company to remedy the alleged default.
- 15.3. The Company will not accept any claims for defective or damaged goods once installation has begun.
- 15.4. Any Goods considered to be damaged or defective (together with their packaging materials) shall be retained, which is considered to be sub-standard shall be left unaltered by the Buyer intact as delivered for a period of 21 days from notification of the claim to the Company, within which time the Company or its agents shall have the right to investigate the complaint and examine the Goods. Once installation has started the Buyer accepts full responsibility for the goods and any damage.
- 15.5. Failure to notify the Company of the non-delivery of the Goods, or any of them, within 21 days of the due date for delivery will release the Company from liability for claims for non-delivery or non-performance.
- 15.6. If the parties agree that the Goods are damaged or defective, and that it is not possible to remedy any defect then the Company shall provide the Buyer with the option to replace the Goods, or credit the Buyer accordingly
- 15.7. The Company shall have no liability to the Buyer in respect of damaged or defective Goods (and the Buyer shall be required to pay the full contract price) where damage has been sustained after delivery of the Goods to the Buyer, or defects are caused by installation, operation or maintenance carried out other than in accordance with any instructions supplied orally or in writing with the Goods, or by wear and tear, accident or misuse, improper operation or neglect or if any adjustment, alteration or other work has been performed by any person other than the Company or its employees or agents.
- 15.8. The Buyer accepts that the products sold by the Company are classified as Fireplaces and are sold as a form of heating. Due to the very nature of the products wear and tear due to heat is to be expected including discoloration of burner parts and enclosures.
- 15.9. The Company will not accept any claims for damage due to Wear and Tear.

### **16. Intellectual property rights indemnities**

- 16.1. It is the Buyer's responsibility to ensure that drawings and specifications and the Goods do not infringe any Patent Trade Mark or Registered Design or any other intellectual property right owned by third parties where the Goods are manufactured or supplied to the Buyer's designs. Any invention disclosure or information made or received or acquired by the Company in the performance of any contract shall remain its property. The Buyer shall not reproduce by any means nor disclose to any third party any information or material relating to Goods without the prior written consent of the Company and shall not infringe any copyright Patent Trade Mark trade name logo get up or registered design vested in the Company.

### **17. Limitation of Liability**

- 17.1. The Company shall be under no liability: -
  - 17.1.1. in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer or its employees or agents
  - 17.1.2. where parts, materials or equipment have not been manufactured by the Company in respect of which the Buyer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer of the Company

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- 17.1.3. for any consequential loss including loss of profit howsoever caused
- 17.2. The Company's liability howsoever arising shall not exceed: -
- 17.2.1. for death or personal injury caused by the Company's negligence – £5 000 000
- 17.2.2. for loss or damage tangible property - £5 000 000
- 17.2.3. for other direct loss liability for damages commensurate with the purpose of the Goods
- 17.3. Clauses 17.1 and 17.2 shall not apply in the case of a Business Dealer. In such cases all liability owed to the Dealer is fully excluded except where the Dealer Claims for personal injury or death occasioned by the Company's negligence.
- 17.4. The Company endeavours to perform the whole or any part of the Services with reasonable skill and care.
- 18. Business Buyer Indemnity & Confidentiality**
- 18.1. The Business Buyer shall fully indemnify the Company against all costs, claims, damages and expenses to which the Company may become liable if use of the Goods, by the Buyer in any way involves an infringement of any intellectual property right enjoyed by a third party or for any and all direct or indirect loss claim demand or expense cost or liability incurred by and arising directly or indirectly from any act or omission of the Business Buyer's agents, employees or sub contractors or from any breach of the law.
- 18.2. The Business Buyer shall not disclose, and shall use its best endeavours to prevent the disclosure by any of its employees or agents of, any confidential information about the Company, its employees or agents, its business, or the Goods which may come into its possession or knowledge as a result of the Contract, save where such information is already in the public domain.
- 19. Export Terms**
- 19.1. Where the Goods are supplied for export from the United Kingdom the Buyer is responsible for the suitability of the products for the local regulations and the technical requirements.
- 19.2. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods or Services into the country of destination and for the payment duties and taxes thereon.
- 19.3. Unless otherwise agreed in writing between the Company and the Buyer, the Goods shall be sold on an ex works basis.
- 19.4. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection, and which is made after shipment or in respect of any damage during transit.
- 19.5. The Buyer undertakes not to offer the Goods for resale in any country notified by the Company to the Buyer or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.
- 19.6. "Export Partner" agreements, where a business buyer has an agreement with the company to exclusively sell in a particular country / territory, a separate agreement is entered into and includes these terms and conditions.
- 20. General**
- 20.1. Failure or delay by the Company in enforcing or partially enforcing any provision of the contract will not be construed as a waiver of any of its right under the contract.
- 20.2. Any waiver by the Company of any breach of, or any default under, any provision of the contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the contract.
- 21. Outside Factors**
- 21.1. The Company shall not be liable for any delay, or other failure to perform any part of the contract, as a result of any factor outside the company's control, whether an Act of God or otherwise.
- 22. Governing Law**
- 22.1. These Conditions shall be governed and constructed in accordance with the Law of England and except where otherwise expressly provided for herein the parties hereto hereby choose and submit to the jurisdiction of the English courts.
- 23. GUARANTEE**
- 23.1. Subject To Clause 23.2, 23.3, 23.4, 23.5 the Company guarantees that if the quality of the Goods cease to comply with the quality requirements set out in these Conditions with a period of one year from the date of delivery the Company shall at its discretion either arrange for a contractor to attend the Buyer's premises or remove the Goods and in either event remedy the default at its own cost.
- 23.2. The guarantee referred to in this clause 23 shall not apply where:
- 23.2.1. the Goods have not been used in accordance with the Conditions of Use provided by the Company
- 23.2.2. the Buyer has failed to maintain servicing of the Goods in accordance with the Company's recommendations notified to them or the default relates to installation.
- 23.3. FAILURE TO USE AND INSTALL YOUR FIRE AND / OR SURROUND IN ACCORDANCE WITH THE CONDITIONS OF USE AND CONDITIONS OF INSTALLATION MAY INVALIDATE THIS GUARANTEE**
- 23.4. If any part of this clause 23 conflicts with any other provision contained in these conditions, this clause 23 shall prevail.
- 23.5. To validate the guarantee the warranty card supplied with the fire must be completed, by the registered installer and a copy returned to the company.
- 24. CONDITIONS OF USE AND INSTALLATION**
- 24.1. The Conditions of Use are set out in the Operation and Aftercare sections of the Installation and Operation Manual delivered with each of the Company's Fires and Surrounds.
- 24.2. The Conditions of Installation are set out in the installation section of the Installation and Operation Manual delivered with each of the Company's Fires and Surrounds**
- 24.3. IN YOUR OWN INTERESTS AND THAT OF GAS SAFETY REGULATIONS IT IS THE LAW THAT ALL GAS APPLIANCES ARE INSTALLED AND MAINTAINED BY APPROPRIATELY APPROVED AND REGISTERED GAS INSTALLERS**
- 24.4. SERVICE MAINTENANCE**
- 24.4.1. It is recommended that gas appliances are serviced by registered gas engineers on an annual basis.
- 25. SUPPLY ONLY DELIVERY**
- 25.1. Upon receipt of delivery of the Company's Goods, any errors or omissions, or faults that are recognisable prior to installation, such as chips or cracks, must be reported to the Company's Newton Aycliffe office on +44 (0) 1325 327 221 within 48 hours.
- 26. FAULTS NOT COVERED BY THE GUARANTEE**
- 26.1. Faults not covered by the guarantee may be rectified, at the owner's cost, by either returning the Goods to the Company for inspection and proposed remedy, or by a Company engineer attending the location of the Goods and reporting on the solutions for remedy.