

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

1. Definitions and Interpretation

1.1 In these Conditions the following words and expressions have the following meanings unless inconsistent with the context:

“**Conditions**” these terms and conditions;

“**Confidential Information**” without limitation, business, commercial, economic, financial, operational, technical, administrative, marketing, planning and staff information and data relating to the Supplier or its interests including any Intellectual Property Rights disclosed to the Purchaser whether before, during or after the provision of the Goods, whether in written, oral, pictorial or any other form, and all information, data, know-how, trade secrets, formulae, processed, designs, photographs, drawings, specifications, software programs, samples or other material attributable to or deriving its existence from the provision of the Goods;

“**Contract**” any agreement for the supply of Goods from the Supplier to the Purchaser in accordance with Condition 2.5;

“**Contract Details**” the specific details of the Contract confirmed by the Supplier in writing to the Purchaser prior to delivery of the Goods including any Price Offer;

“**Control**” the person or persons acting in concert:

- (a) controlling or being able to control the composition of a majority of the board of directors of the Purchaser;
- (b) ultimately or beneficially holding directly or indirectly 50% or more of the equity share capital of the Purchaser;
- (c) able to vote over 50% of the issued voting share capital or any class thereof or, who otherwise have controlled influence over the Purchaser by virtue of their shareholding in the Purchaser or by agreement;

“**Purchaser**” the person which has accepted these Conditions;

“**Delivery Location**” the location for delivery of the Goods in accordance with Condition 7.1 and as set out in the Contract Details;

“**Due Date**” being 30 days from the date of the invoice;

“**Goods**” all goods supplied by the Supplier to the Purchaser pursuant to the Contract as detailed in the Contract Details;

“**Input Materials**” all relevant information, specifications, instructions and materials requested by the Supplier or necessary for the Supplier to perform the Contract;

“**Intellectual Property Rights**” all patents, industrial designs, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and “**Intellectual Property Right**” means any one of the Intellectual Property Rights;

“**Price**” the price due from the Purchaser for the supply of the Goods as detailed in the Contract Details;

“**Unpaid Amount**” any sum due to the Supplier under the Contract which has not been paid by the Purchaser to the Supplier by the Due Date; and

“**Working Day**” any day from Monday to Friday other than a statutory holiday or public holiday in the United Kingdom.

1.2 References to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified or re-enacted and in force from time to time, and any subordinate legislation made from time to time under the relevant statute or statutory provision.

1.3 Any reference to “**writing**” or any cognate expression includes communications by post and email but excludes facsimile and text messages.

1.4 The headings to Conditions do not affect the interpretation of these Conditions.

1.5 Any phrase introduced by the term “**include**”, “**including**”, “**in particular**” or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.

2. Basis of Contract

2.1 These Conditions shall apply to the sale and supply by the Supplier of all Goods purchased by the Purchaser and these Conditions shall govern the Contract to the exclusion of any other terms and conditions introduced or submitted by the Purchaser.

2.2 No variation (which shall include a concession or permit) of these Conditions shall be binding unless agreed in writing by the Supplier and no collateral or supplemental contract may be made or construed unless confirmed in writing by the Supplier.

2.3 Any Price Offer submitted to the Purchaser will not constitute an offer for the purposes of contract formation and shall remain valid for the period stated therein. Notwithstanding this Condition 2.3, and any validity period set out in a Price Offer, a Price Offer shall no longer be valid where a sub-contractor or supplier to the Supplier has changed its charges, or where the Supplier notifies the Purchaser that it has withdrawn the Price Offer. For the avoidance of doubt, the Supplier may withdraw a Price Offer at any time without liability to the Purchaser.

2.4 Each order or acceptance of a Price Offer for the supply of Goods by the Purchaser shall be deemed to be an offer by the Purchaser to purchase the Goods subject to these Conditions.

2.5 These Conditions shall become binding on the Purchaser when:

- (a) the Purchaser gives instructions for the delivery of the Goods or otherwise engages in any conduct confirming an intention to proceed with the order it has placed or the Price Offer it has received;
- (b) the Supplier acknowledges the order placed by the Purchaser, whether by telephone, fax, email, through the Supplier's portal or otherwise, in writing, which may include, but is not limited to, acknowledgement by order confirmation email and in each case includes a copy of the Contract Details; or
- (c) the Supplier commences processing of the order and/or provision of the Goods;

whichever is the earlier, at which point a “**Contract**” shall come into existence between the Supplier and the Purchaser.

2.6 Where the Supplier confirms the details of the Contract in writing and/or on receipt by the Purchaser of the Contract Details, the Purchaser shall be under a duty to bring any discrepancies to the Supplier's notice within 3 days of receipt, and if the Purchaser fails to bring any such discrepancies to the Supplier's notice within the said time period, the Purchaser shall be bound by the details contained mentioned or referred to in the Contract Details or otherwise.

2.7 In the event that the Purchaser wishes to cancel an order, it may only do so with the written consent of the Supplier and on the terms that the Purchaser shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

2.8 The Supplier may cancel an order prior to delivery by written notice to the Purchaser, in which case the Supplier shall have no liability to the Purchaser under any circumstances other than for the Price or such portion of the Price where payment has been made in advance of Delivery.

2.9 All orders and Price Offers are placed subject to the availability of the Goods and the Supplier retains the right to decline or rearrange any order on these grounds or any other grounds, including but not limited to any indication, whether following a credit check or otherwise, that the Purchaser may not be able to pay for the Goods.

2.10 Any typographical, clerical or other omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier or appearing on the Supplier's website or Purchaser portal shall be subject to correction without any liability on the part of the Supplier.

2.11 The images or descriptions of the Goods on the Supplier's website or portal or contained in any sales literature provided by the Supplier are for illustrative purposes only and the Supplier cannot guarantee that a computer display will accurately reflect the colour or appearance of the Goods. The Goods may vary slightly from those images.

3. Price

3.1 Except as otherwise stated in the Contract Details or as agreed by the parties in writing, the Price is exclusive of the costs of delivery, storage and insurance.

3.2 Except as otherwise stated in the Contract Details or as agreed by the parties in writing, the Price is exclusive of VAT, any equivalent sales tax and any other taxes, duties or charges payable in relation to the sale, delivery or export of the Goods.

3.3 The Supplier reserves the right to increase the Price by giving written notice at any time up to 7 Working Days prior to delivery in accordance with Condition 7.1 to take account of any increase howsoever arising in the Price including but without being limited to any increase in the costs of materials, labour or delivery, to take account of any fluctuations in exchange rates, and or alteration of duties as shall be reasonable in the circumstances.

3.4 The Supplier reserves the right to charge the Purchaser, for any additional work undertaken over and above that which would have been otherwise required, (including any expenses or financial penalties incurred by the Supplier) as a result of any instructions supplied by the Purchaser, being incomplete, incorrect, inaccurate, illegible, out of sequence, in the wrong form, or provided to the Supplier too late to enable it to meet a deadline.

4. Payment Terms

4.1 The payment terms in this Condition apply save to the extent that they are inconsistent with any specific payment terms set out in the Contract Details or otherwise agreed in writing between the parties.

4.2 The Supplier shall be entitled to invoice to the Purchaser for the Goods on dispatch of the Goods unless otherwise set out in the Contract Details or agreed in writing between the parties.

4.3 The Purchaser shall make payment for the Price in the currency specified within the Contract Details by electronic transfer. Unless agreed otherwise in writing any payment received by the Supplier in any currency not specified in the Contract Details or by any other method will not be deemed to be payment for the Goods in question. Payment will not be deemed payment for the Goods in question unless and until it is received in full and in cleared funds.

4.4 Unless otherwise stated in writing, the Purchaser shall pay each invoice from the Supplier without any set-off or other deduction by the Due Date.

4.5 The Supplier's invoices shall be payable in accordance with this Condition 4, notwithstanding that delivery of the Goods may not have taken place and title may not have passed to the Purchaser. The time of payment of the Supplier's invoices shall be of the essence of the Contract.

4.6 If the Purchaser fails to pay in full any invoice from the Supplier by the Due Date or in any other way breaches these Conditions, and without prejudice to any other right or remedy the Supplier may have:

- (a) all invoices issued by the Supplier in respect of any Goods sold or supplied pursuant to this Contract and any sums due for goods and/or services under any other contract which may exist between the parties shall immediately fall due for payment; and
- (b) the Supplier shall be entitled to:
 - (i) cancel or suspend any further deliveries of Goods to the Purchaser under any order;
 - (ii) sell or otherwise dispose of the Goods and/or any goods and/or services which are the subject of any order by the Purchaser, whether or not appropriated thereto, and, where applicable, apply the proceeds of sale to the unpaid amount;
 - (iii) where applicable, charge the Purchaser interest (both before and after any judgment) on the unpaid amount, in accordance with the statutory rate of 8% above the base rate of the Bank of England set by the Late Payments of Commercial Debts (Interest) Act 1998 as amended from time to time;
 - (iv) appropriate any payment made by the Purchaser to such of the Goods (or goods and/or services supplied under any other Contract) as the Supplier may think fit; and
 - (v) by notice to the Purchaser unilaterally vary payment terms for future contracts;
 - (c) the Purchaser shall indemnify the Supplier for all reasonable costs that are reasonably incurred by the Supplier (either directly or indirectly or by a third party) in seeking or securing payment of any unpaid amount or otherwise pursuing any claim for damages for breach of this Contract. This indemnity shall apply whether or not the Purchaser has been negligent or at fault. For the avoidance of doubt, the limitations set out in Condition 10, do not apply to the indemnity in this Condition 4.6(c).

4.7 Unless otherwise agreed in writing by the Supplier, all queries from the Purchaser regarding any invoice must be received prior to its Due Date.

5. Goods

5.1 The Goods are as described in the specification set out in the Contract Details.

5.2 The Supplier may, from time to time and without notice, change the Goods in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the Price.

5.3 The Supplier reserves the right to make changes to the specification set out in the Contract Details on written notice to the Purchaser.

6. Risk and Title

6.1 Risk of damage to or loss of the Goods shall pass to the Purchaser at the time of delivery to or collection (as applicable) from the Delivery Location other than where the Purchaser wrongfully fails to take delivery in which case, risk shall pass to the Purchaser at the time when the Supplier has tendered delivery of the Goods.

6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Purchaser until the Supplier has received in cash or cleared funds payment in full of:

- (a) the Price; and
- (b) all other sums payable by the Purchaser to the Supplier for which payment is then due.

6.3 Until such time as title passes to the Purchaser:

- (a) the Purchaser shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Supplier's property, but shall be entitled to resell or use the Goods in the ordinary course of its business;
- (b) if Goods are damaged or destroyed by an insured risk prior to the same being paid for by the Purchaser, the Purchaser shall receive the proceeds of any such insurance as trustee for the Supplier;
- (c) the Supplier shall be entitled at any time to require the Purchaser to deliver up the Goods to the Supplier and if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or third party where the Goods are stored and mark identify and repossess the Goods and the Purchaser grants the Supplier an irrevocable license to enter any premises of the Purchaser for such purposes; and
- (d) the Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Purchaser does so all monies owing by the Purchaser to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

7. Delivery

7.1 The Supplier shall reasonably endeavour to deliver the Goods in accordance with any time periods set out in the Contract Details, subject to the availability of the Supplier's employees, agents, sub-contractors and carriers and the availability and delivery of the Goods. The time for delivery shall not be of the essence and for the avoidance of doubt, the Supplier shall have no obligation to deliver the Goods until the Purchaser has made payment in cleared funds of the Price or such part of the Price as is due for that instalment of the Goods.

7.2 The Supplier shall have the right to deliver the Goods ordered by the Purchaser in instalments. Failure by the Supplier to deliver any one or more of the instalments on any agreed date or any claim by the Purchaser in respect of the Goods delivered in any one or more instalments shall not entitle the Purchaser either to treat the Contract as a whole as repudiated or to reject or refuse to take delivery of any of the Goods delivered in any other instalment.

7.3 If the Purchaser fails to take delivery of the Goods (otherwise than by reason of the Supplier's fault) or fails to give the Supplier adequate instructions for delivery within 14 days of being notified by the Supplier that the Goods are ready for delivery then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:

- (a) store the Goods until actual delivery and charge the Purchaser for the reasonable costs (including insurance) of storage from the date on which the Purchaser was notified the Goods were ready for delivery and, where relevant, redelivery, as an additional charge; or
- (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Purchaser for any shortfall below the Price under the Contract.

7.4 The Purchaser shall accept delivery of the Goods in accordance with the Contract Details and shall, where applicable, promptly load or unload the Goods (as detailed in the Contract Details). For the avoidance of doubt, where the Supplier is responsible for delivery to the Purchaser, the Supplier or the Supplier's carrier shall not be responsible for unloading the Goods and the Purchaser shall be charged for wasted time at the Supplier's standard rate and any other expenses incurred by the Supplier:

- (a) for any delay in unloading the Goods; and/or

- (b) for each repeat delivery where the Supplier or Supplier's carrier leaves the delivery location and subsequently returns to the delivery location with the Goods; and/or
- (c) as a result of the Purchaser's inability or unwillingness to accept delivery of, or to collect, the Goods.

7.5 Upon delivery the Purchaser will be required to sign the Supplier's, or the Supplier's carrier's, delivery note as conclusive evidence that delivery was made and of the quantity of Goods received by the Purchaser.

7.6 Notwithstanding the provisions of Condition 7.5 above, the Purchaser shall notify the Supplier of any shortfall of Goods delivered or non-delivery of a consignment, within 3 Working Days of the delivery date. Notification must be by telephone followed by written confirmation by way of email within 2 Working Days. Where the Supplier is unable to demonstrate that full delivery has been made then the Supplier shall be entitled to make good any shortage or non-delivery of a consignment of the Goods. Where it does not do so, it shall notify the Purchaser in writing of its decision and the Price may be adjusted on a pro-rata basis.

7.7 Where the Goods are delivered by bulk pressure tanker or similar means, the Purchaser shall be responsible for the correct connection of such tanker to the receiving hopper or other such equivalent device and shall be liable for any loss or damage resulting from any failure to do so. The quantity of Goods delivered to the Purchaser shall be that recorded by the Supplier on dispatch to the Purchaser and the Supplier shall not be liable for any shortfall where the quantity of Goods is reduced following dispatch to the Purchaser.

7.8 Where delivery is requested to a location outside the United Kingdom unless otherwise stated within the Contract Details the Purchaser will be responsible for payment of any import duties and taxes which may be applied, for obtaining any necessary licences, consents or permits and for ensuring the Goods comply with all applicable laws and regulations of the country to which delivery has been requested. The Supplier will have no liability to the Purchaser for any charges which arise or any breach of national or international law caused by the Purchaser's order, and the Purchaser shall fully indemnify the Supplier against any costs so incurred.

8. Acceptance

8.1 Acceptance of the Goods shall take place:

- (a) in accordance with Condition 7.5; or
- (b) upon the signing of the Supplier's acceptance note as otherwise set out in the Contract Details; or
- (c) upon the use of the Goods by the Purchaser; whichever shall occur first.

9. Purchaser Obligations

9.1 The Purchaser warrants that:

- (a) it will provide all Input Materials and that such Input Materials will be accurate and complete and do not infringe the Intellectual Property Rights or any other rights of any third party;
- (b) it will provide where applicable, such equipment as the Supplier may reasonably require to enable the Supplier to perform its obligations under these Conditions and that such equipment will be in a good and serviceable condition and fit for such purposes as the Supplier requires in order for it to perform its obligations under these Conditions;
- (c) it will co-operate with the Supplier in all matters relating to the Goods;
- (d) it will provide where applicable, for the Supplier, its employees, agents and sub-contractors, in a timely manner and at no charge, access to any location as requested by the Supplier as necessary to enable the Supplier to perform its obligations under these Conditions;
- (e) it will carry out all actions specified in the Contract Details by the times and dates set out therein;
- (f) where applicable, it shall take all reasonable precautions to ensure the health and safety of the Supplier, its employees, agents, or sub-contractors whilst at the Purchaser's premises and any other location for delivery stated in the Contract Details and will inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at such location; and
- (g) it will obtain before the date on which the Goods are to start and maintain all necessary licenses and consents and comply with all relevant legislation in relation to the Goods.

9.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Purchaser, its agents, sub-contractors or employees or a failure by the Purchaser to comply with its obligations under Condition 9.1, the Supplier shall not be liable for any costs, expenses, losses or charges sustained or incurred by the Purchaser arising directly or indirectly from such prevention or delay.

9.3 Notwithstanding the provisions of Conditions 9.2 and 9.4, the Supplier may charge the Purchaser for any additional reasonable costs and expenses incurred by the Supplier caused by the Purchaser's instructions, failure to provide instructions, or failure to comply with Condition 9.1.

9.4 The Purchaser shall indemnify and hold the Supplier harmless from all claims and all direct, indirect and consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by, the Supplier as a result of or in connection with any inaccuracy, incompleteness or alleged or actual infringement of a third party's Intellectual Property Rights or other rights arising out of the Supplier's use of the Input Materials.

9.5 The Purchaser shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of 6 months after the termination of the Contract, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, sub-contractor or supplier of the Supplier in the provision of the Goods.

9.6 Any consent given by the Supplier in accordance with Condition 9.5 shall be subject to the Purchaser paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, where a supplier to the Supplier, the value of the Supplier's annual contracts with their supplier, or if higher, 20% of the annual remuneration to be paid by the Purchaser to that employee or sub-contractor or the annual value of contracts offered to the Supplier's supplier by the Purchaser.

10. Warranties and Liability

10.1 Subject to the Conditions set out below the Supplier warrants that upon delivery the Goods will:

- (a) be free from material defects in quality or workmanship;
- (b) comply with the specification set out in the Contract Details. For the avoidance of doubt the Supplier may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality of the Goods;
- (c) be produced, packaged and labelled in compliance with the applicable laws in Purchaser's territory as notified to Supplier by Purchaser in writing in advance; and
- (d) be free from and clear of any encumbrances;
- subject at all times to the Purchaser complying with the obligations set out in Condition 9.1 and acting in accordance with any instructions provided by the Supplier.

10.2 Notwithstanding the provisions of Condition 10.1 above, where the Supplier is not the producer of the Goods, the Supplier shall use reasonable endeavours to transfer to the Purchaser the benefit of any warranty or guarantee given to the Supplier.

10.3 Subject as expressly provided in these Conditions, all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. In particular, the Supplier makes no warranty as to the fitness of the Goods for any particular purpose even if that purpose is stated in the Purchaser's order. This exclusion includes recommendations or advice from the Supplier to the Purchaser relating to a specific enquiry. The Purchaser must satisfy itself as to the fitness for the purpose for which the Goods are intended.

10.4 The Supplier shall not be liable for a breach of any of the warranties in Condition 10.1 unless:

- (a) the Purchaser gives written notice by post or email of the defect to the Supplier and if, where the Supplier is responsible for delivery, the defect is as a result of damage in transit gives written notice by post and email to the Supplier within 3 Working Days of receipt specifying the details of the defect and the date of delivery. In the event of a defect which is not apparent on delivery the Purchaser shall inform the Supplier in writing by post or email of such defect immediately on discovery of the defect but in any event within 5 Working Days of the date of delivery; and
- (b) the Supplier is given a reasonable opportunity after receiving the notice of examining the Goods and the Purchaser complies with any request from the Supplier to return Goods to the Supplier's place of business at the Purchaser's cost for examination to take place there. The reasonable cost of packaging and carriage of returned Goods incurred by the Purchaser will be reimbursed by the Supplier if the Goods are found to be in breach of the warranties set out in Condition 10.1.

10.5 The Supplier shall not be liable for breach of warranty under Condition 10.1 if:

- (a) the Purchaser makes any further use of such Goods after giving notice under Condition 10.4(a); or
- (b) the breach has arisen as a consequence of the Purchaser's failure to comply with the requirements under Condition 9.1(b); or
- (c) the defect arises because the Purchaser has failed to follow the Supplier's or manufacturer's instructions (whether oral or in writing) as to the storage, installation, commissioning, proper use and maintenance of the Goods or (if there are none) good trade practice; or
- (d) the Purchaser alters the Goods without the written consent of the Supplier; or

(e) the Purchaser states, whether expressly or by implication, that the Goods are to be used for a specific purpose and they are not fit for that specific purpose.

10.6 Where any valid claim in respect of the Goods is made by the Purchaser the Supplier shall be entitled at its option to:

- (a) replace or correct the Goods found not to conform to warranty at the Supplier's cost; or
 - (b) at the Supplier's sole discretion, refund to the Purchaser the Price (or a proportionate part of the Price) of the relevant part of the Goods found not to conform to warranty,
- and subject to Condition 10.8 the Supplier shall have no further liability to the Purchaser.

10.7 Subject to Condition 10.8, the Supplier's liability in connection with the sale and supply of Goods shall be as follows:

- (a) in respect of any loss of profits, loss of business, loss of goodwill, loss of anticipated savings or loss of use, the Supplier's liability shall be nil;
- (b) for any type of consequential, special or indirect loss or damage, the Supplier's liability shall be nil; and
- (c) in respect of all types of direct loss (whether in contract, tort or otherwise) the Supplier's total aggregate liability under the Contract shall not exceed the total Price of the Goods in the relevant Contract Details, save where such liability is covered by any insurance policy held by the Supplier in which case the Supplier's liability shall be limited to the amount successfully recovered by the Supplier under that policy in respect of such liability.

10.8 Nothing in these Conditions seeks to limit the Supplier's liability for personal injury or death caused by the Supplier's negligence in respect of which the Supplier's liability shall be unlimited.

10.9 Subject to Condition 10.8, the Supplier shall have no liability under these Conditions or otherwise if the Goods have not been paid for by the Due Date.

10.10 Any claim by the Purchaser under this Condition 10 in respect of any Goods shall not entitle the Purchaser to withhold or delay payment in respect of any other Goods in respect of which no such claim has been made whether or not those Goods form part of the same consignment.

11. Intellectual Property Rights

11.1 The Purchaser acknowledges that the Supplier is the owner of or licensee of all Intellectual Property Rights in the Goods, including any specification, sales literature, catalogue or webpage. Under no circumstances shall any of the Intellectual Property Rights transfer to the Purchaser other than as expressly stated within these Conditions and/or the Contract.

11.2 The Supplier grants to the Purchaser a non-exclusive licence (without the right to sub-licence) to use any Intellectual Property Rights in the Goods for the purpose of making reasonable use of the Goods only.

12. Protection of Confidential Information

12.1 For the duration of the Contract and thereafter notwithstanding its termination or expiry, the Purchaser shall keep the Confidential Information of the Supplier confidential and secret, the Purchaser shall only use the Confidential Information of the Supplier as necessary for the purpose of making reasonable use of the Goods and for performing the Purchaser's obligations under the Contract. The Purchaser shall inform its officers, employees and agents of the Purchaser's obligations under the provisions of this Condition 12, and ensure that they meet such obligations.

12.2 The obligations of Condition 12.1 shall not apply to any information which:

- (a) was known or in the possession of the Purchaser before it was provided by the Supplier;
- (b) is, or becomes, publicly available through no fault of the Purchaser;
- (c) is provided to the Purchaser without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
- (d) was developed by the Purchaser (or on its behalf) without direct access to, or use or knowledge of the Confidential Information supplied by the Supplier; or
- (e) is required to be disclosed by order of a court of competent jurisdiction.

12.3 This Condition 12 shall survive termination and/or expiration of the Contract.

13. Dispute Resolution

13.1 Any dispute, difference or claim between the parties arising out of or relating to the Contract ("**Dispute**") shall be resolved as provided in this Condition 13.

13.2 The parties shall each use their reasonable endeavours to resolve any Dispute by prompt discussions in good faith at a level appropriate to the Dispute in question. This procedure commences when either party gives notice to the other in writing setting out the issues in the Dispute and
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referring to this Condition. Unless the parties otherwise agree in writing this procedure shall be treated as having been exhausted if the Dispute has not been settled within a reasonable period of time to be determined by both parties acting reasonably at all times. However, for the avoidance of doubt, the parties shall attempt to resolve such disputes or differences in good faith and without recourse to legal proceedings.

13.3 In the event that the process in Condition 13.2 is exhausted, the parties agree that any Dispute, shall be resolved by arbitration under the rules of the Chartered Institute of Arbitrators in force at the time of the Dispute. It is further agreed that:

- (a) the tribunal shall consist of one arbitrator (who is to be a person of suitable qualification and professional standing with experience of the subject matter of the Dispute);
- (b) in default of the parties' agreement as to the arbitrator(s), the appointing authority shall be the Chartered Institute of Arbitrators in London;
- (c) the seat of the arbitration shall be London;
- (d) the law governing this arbitration agreement shall be English; and
- (e) the language of the arbitration shall be English.

13.4 The above provisions do not prevent either party issuing legal proceedings prior to the commencement or completion of the negotiation, mediation and arbitration set out above, where that party seeks injunctive relief from the Courts in circumstances where damages will not provide an adequate remedy to that party.

13.5 This Condition 13 shall not operate to prevent the Supplier from seeking injunctive relief in relation to a breach of Conditions 11 and 12 by the other party.

14. Termination and Consequences

14.1 Without prejudice to any other remedies or rights whether under the Contract or otherwise, the Supplier may terminate the Contract at any time by written notice to the Purchaser and the notice taking effect as specified in the notice if:

- (a) the Purchaser commits a material or persistent breach of any of these Conditions which shall include a failure to pay any sum due under the Contract by the Due Date, and (if such a breach is remediable), fails to remedy that breach (which, in relation to late payment, shall include payment of any interest) within 14 days of being notified in writing; or
- (b) the Purchaser takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- (c) the Purchaser suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (d) there is a change in Control of the Purchaser; or
- (e) the Supplier reasonably apprehends that any of the events mentioned above is about to occur and notifies the Purchaser accordingly; or
- (f) the Supplier is unable to obtain any licence or consent necessary to comply with any relevant legislation.

14.2 For the purposes of Condition 14.1(a) a breach shall be considered capable of remedy if the Purchaser can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

14.3 Upon termination of the Contract for any reason:

- (a) the Purchaser shall immediately pay to the Supplier all outstanding invoices, and in respect of any part of the Price or other sums payable by the Purchaser but for which no invoice has been submitted, the Supplier may submit an invoice which shall be payable immediately on receipt; and
- (b) the Purchaser shall, upon the Supplier's request, pay any part of the Price for any Goods which are in the process of being manufactured but have not yet been completed, and in such case the Supplier shall then, deliver those Goods to the Purchaser; and
- (c) each party shall return, delete or destroy all Confidential Information and all other information which has been provided to it by the other party belonging to that other party in whatever medium in accordance with the instructions of that other party; and
- (d) any licence granted by these Conditions shall terminate; and
- (e) the accrued rights and remedies of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

15. Force Majeure

15.1 The Supplier shall not be liable to the Purchaser or be deemed to be in breach of this Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Supplier's reasonable control such as (but without limitation) any strike, lock-out or other form of

industrial action, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors or inability to procure materials required for performance of the Contract.

accordance with, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England.

16. Notices

16.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any notice:

- (a) sent by post shall be deemed served on the next Working Day following posting where the notice is sent and received within the United Kingdom, or 7 Working Days following posting where the notice is sent and/or received outside of the United Kingdom; and
- (b) sent by email shall be deemed served at the time of transmission provided that the transmission occurs on a Working Day and a confirmatory copy of the email is sent by post within 24 hours of transmission of the email.

16.2 To prove service it shall be sufficient to show that the email was transmitted to the email address of the other party or that the envelope containing the notice was properly addressed and posted.

17. Entire Agreement

17.1 Each Contract constitutes the entire agreement between the parties in relation to its subject matter, supersedes any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law. Each party agrees that it shall have no remedy in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out within the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

18. No Partnership or Agency

18.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for or to bind another party in any way.

19. Further Assurance

19.1 Each party to the Contract shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of the Contract or to make it easier to enforce.

20. Assignment

20.1 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

20.2 The Purchaser shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any manner with all or any of its rights or obligations under the Contract.

21. Severance

21.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions shall remain in full force and effect.

22. Waiver

22.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by the Supplier 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

23. Cumulative Remedies

23.1 All rights and remedies available to either of the parties under the terms of the Contract or under the general law are to be cumulative, and no exercise by either of the parties of any such right or remedy is to restrict or prejudice the exercise of any other right or remedy granted by the Contract or otherwise available to that party.

24. Third Party Rights

24.1 A person who is not a party to the Contract will not have any rights under any term of the Contract.

25. Governing Law and Jurisdiction

25.1 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), shall be governed by, and construed in