

TERMS AND CONDITIONS FOR THE SALE OF GOODS AND THE SUPPLY OF SERVICES

1. INTERPRETATION

In these Conditions, the definitions and rules of construction set out in the Schedule apply.

2. BASIS OF SALE OF GOODS

- 2.1 No Contract shall exist between the Customer and the Supplier until the Customer has accepted a written quotation of the Supplier or the Supplier has accepted a written order of the Customer, such Contract in either case being subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Customer (whether before or after the making of the Contract) (including in particular any terms and conditions stated on the Customer's Contract or order form).
- 2.2 The Supplier's employees or agents are not authorised to make or give any representations, assurances or warranties concerning the Goods and/or the Services other than as expressly provided in these Conditions or unless otherwise confirmed by the Supplier in writing. In accepting these Conditions, the Customer acknowledges that it does not rely on any such representations, assurances or warranties which are not so confirmed.
- 2.3 Any advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods or in relation to the Services which is not confirmed in writing by the Supplier is followed or acted upon entirely at the Customer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.4 Where the Supplier acts in the capacity of agent for the Manufacturer in respect of Goods, then the Supplier shall have no liability whatsoever for any loss or damage arising out of or in connection with or resulting from the manufacture, sale, delivery, re-sale, replacement or use of the Goods by reason only of its being held out as the agent of the Manufacturer.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's media referred to in paragraph 1.4 of the Schedule are issued for the sole purpose of providing the Customer with an approximate indication of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual status.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms which are implied by trade, custom, practice or course of dealing.
- 2.7 Any quotation given by the Supplier is only valid for a period of 20 Business Days from its date of issue.
- 2.8 All of these Conditions shall apply to the sale of both Goods and the supply of Services except where application to one or the other is specified.

3. ORDERS AND SPECIFICATIONS

- 3.1 No order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in writing by the Supplier's Authorised Representative.
- 3.2 The Customer shall be responsible to the Supplier for ensuring the accuracy of the terms of any Goods Specification or Services Specification or order submitted by the Customer, and for giving the Supplier any necessary information relating to the Goods and/or Services within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.

- 3.3 The quantity, quality and description of the Goods and/or Services and any Goods Specification or Services Specification shall be those set out in the Supplier's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Supplier).
- 3.4 Subject always to:
- 3.4.1. prior notification to the Customer, the Supplier reserves the right to make any changes in the Goods Specification or Services Specification which are required in order to conform with any applicable national or European legal or regulatory requirements; or
- 3.4.2. prior consultation and agreement with the Customer, where the Goods and/or Services referred to in the Goods Specification or Services Specification are to be supplied to the Supplier's specification, the Supplier reserves the right to make any changes in the Goods Specification or Services Specification which do not materially affect the quality or performance of the Goods or the Services as the case may be.
- 3.5 No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.

4. PRICE OF THE GOODS

- 4.1 The price of the Goods shall be the price quoted by the Supplier for the Goods in the Contract (and, for the avoidance of doubt, where the Contract is formed on the basis of acceptance by the Customer of a written quotation from the Supplier, the price shall, unless otherwise agreed in writing between the Customer and the Supplier, be the price referred to in such quotation).
- 4.2 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier such as any foreign currency exchange fluctuation, currency regulation, alteration or imposition of taxes and duties, increase in the costs of labour, materials, services or other costs of manufacture, any change in delivery dates, quantities or types of Goods or Goods Specification which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions in respect of the Goods.
- 4.3 Except as otherwise stated under the terms of any quotation of the Supplier, and unless otherwise agreed in writing between the Customer and the Supplier, all prices are given by the Supplier on an ex-works basis, and where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Customer shall be liable to pay for the Supplier's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax and any other applicable taxes or duties and the cost of any import or other licences or clearances, which the Customer shall be additionally liable to pay to the Supplier.

5. CHARGES FOR THE SERVICES

- 5.1 Unless the Contract provides otherwise by way of a fixed charge, the charges for Services shall be on a time and materials basis:
- 5.1.1 the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Services Specification or as otherwise notified by the Supplier to the Customer;

- 5.1.2 the Supplier's standard daily fee rates for each individual person are calculated on the basis of an [eight-hour day from 8.00 am to 5.00 pm worked on Business Days];
- 5.1.3 the Supplier shall be entitled to charge an overtime rate of [20] per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1.2; and
- 5.1.4 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

6. TERMS OF PAYMENT

- 6.1 Subject to any special terms agreed in writing between the Customer and the Supplier, the Supplier shall be entitled to invoice the Customer:
 - 6.1.1 for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Supplier shall be entitled to invoice the Customer for the price at any time after the Supplier has notified the Customer that the Goods are ready for collection or (as the case may be) the Supplier has tendered delivery of the Goods; and
 - 6.1.2 for the price of the Services on or at any time after completion of the Services.
- 6.2 Unless otherwise agreed in writing between the Customer and the Supplier, the Customer shall pay to the Supplier by such payment method and in such currency as the Supplier directs, the price of the Goods and the price of the Services within 20 Business Days of the date of the Supplier's invoice, and the Supplier shall be entitled to recover the price, notwithstanding that delivery of the Goods may not have taken place and the property in the Goods has not passed to the Customer. Time shall be of the essence with regard to payment by the Customer. Receipts for payment will be issued only upon request by the Customer.
- 6.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
 - 6.3.1. repudiate the Contract and rescind any quotation and/or suspend any further deliveries of Goods to the Customer and the provision of Services;
 - 6.3.2. appropriate any payment made by the Customer to such of the Goods or Services (or the Goods or Services supplied under any other Contract between the Customer and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Customer);
 - 6.3.3. charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of five per cent per annum above Euribor from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and
 - 6.3.4 recover compensation pursuant to the European Communities (Late Payment in Commercial Transactions) Regulations 2012.

- 6.4 Interest due under clause 6.3.3 and any other sum due under clause 6.3 will be payable on demand and may be charged and added to the balance of overdue payments, and such interest payable under clause 6.3.3 may be compounded, from time to time as the Supplier may determine. A statement from the Supplier as to the rate of interest applicable under clause 6.3.3 will, in the absence of manifest error, be conclusive.
- 6.5 Nothing in this clause will be taken as limiting the Supplier's rights under clause 11.

7. DELIVERY

- 7.1 Delivery of the Goods shall be made by the Customer collecting the Goods at the Supplier's premises within 5 Business Days after the Supplier has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Supplier, by the Supplier delivering the Goods to that place.
- 7.2 Any times set out in the Contract for delivery of the Goods are estimates only and the Supplier will not be liable for failure to deliver within the time set out in the Contract or at all in the circumstances described in clause 13 or where the failure to deliver on time is attributable to the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. The Goods may be delivered by the Supplier in advance of the delivery date set out in the Contract upon giving reasonable notice to the Customer.
- 7.3 Where delivery of the Goods is to be made by the Supplier in bulk, the Supplier reserves the right to deliver up to ten per cent more or ten per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered. Such a deviation in quantity will not give the Customer any right to reject the Goods or to claim damages, and the Customer will be obliged to accept and pay at the Contract rate for the quantity of the Goods delivered.
- 7.4 Where the Goods are to be delivered in instalments, these Conditions will apply to each partial delivery. Failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 7.5 If the Supplier fails to deliver the Goods (or any instalment thereof) for any reason other than any cause beyond the Supplier's control under clause 13 or the Customer's fault, and the Supplier is accordingly liable to the Customer, the Supplier's liability shall be limited to the excess (if any) of the cost (in the cheapest available market worldwide) of similar Goods to replace those not delivered over the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a circumstance described in clause 13 or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any other relevant instructions relating to the Goods or the Services.
- 7.6 If the Customer fails to accept or take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for delivery thereof (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Supplier's fault) then, without prejudice to any other right or remedy available to the Supplier, the Supplier may;
- 7.6.1. store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and transport; or
- 7.6.2. after 5 Business Days after the Supplier has notified the Customer that the Goods are ready for collection or delivery, sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses)

account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

8. RISK AND PROPERTY IN GOODS

- 8.1 Risk of damage to or loss of Goods shall pass to the Customer:
- 8.1.1. in the case of Goods to be delivered at the Supplier's premises, at the time when the Supplier notifies the Customer that the Goods will be available for collection; or
 - 8.1.2. in the case of Goods to be delivered otherwise than at the Supplier's premises, at the time of delivery to the Customer or to a carrier for transmission to the Customer or, if the Customer wrongfully fails to accept or take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods, and sections 32(2) and 32(3) of the Sale of Goods Act 1893 shall not apply.
- 8.2 Notwithstanding the delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full for the price of the Goods and the Services and all other Goods agreed to be sold by the Supplier to the Customer or any Services agreed to be provided to the Customer for which payment is then due.
- 8.3 Until such time as the property in the Goods passes to the Customer, the Customer shall:-
- 8.3.1 hold the Goods as the Supplier's fiduciary agent and bailee;
 - 8.3.2 keep the Goods separate from those of the Customer and third parties;
 - 8.3.3 not incorporate the same into any premises, land or other goods, plant or equipment;
 - 8.3.4 ensure that the Goods are properly stored, protected and clearly identified as being the Supplier's property;
 - 8.3.5 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 8.3.6 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - 8.3.7 notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.1.2 to clause 11.1.12; and
 - 8.3.8 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 8.4 The Supplier shall have the right, without prejudice to the obligations of the Customer to purchase the Goods, to verify the Customer's compliance with this clause 8 (and for that purpose to go upon any premises occupied or owned by the Customer).
- 8.5 Until such time as the property in the Goods passes to the Customer, the Customer shall indemnify and keep indemnified the Supplier against all loss of and damage to the Goods and against any reduction in the re-sale value thereof below the price to be paid therefor by the Customer.
- 8.6 If, upon the expiry of the period referred to in clause 6.2 above, payment for the Goods and/or the Services has not been received by the Supplier and provided the Goods are still in existence and have not been resold, the Supplier shall be entitled at any time to require the

Customer to deliver up the Goods to the Supplier and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods. The Customer shall indemnify and keep indemnified the Supplier against the costs incurred by the Supplier in effecting any such repossession of the Goods whether under this clause 8.6 or clause 8.8 and any loss or damage to the Goods arising in the course thereof.

- 8.7 If the Customer sells or otherwise disposes of the Goods or if they are damaged or destroyed by any risk covered by any insurance effected by the Customer, before payment in full as aforesaid has been made to the Supplier, the Customer will in such case hold in a separate designated bank account in the name of the Supplier all monies received by it from such sale, disposal or the insurance proceeds or right to receive same, in trust for the Supplier and will on request furnish the Supplier with the names and addresses of the persons to whom such disposals have been made together with all necessary particulars to enable the Supplier to recover any outstanding sums due from such persons.
- 8.8 If before property in the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11.1.2 to clause 11.1.12, then, without limiting any other right or remedy the Supplier may have:
- 8.8.1 the Customer's right to resell Goods ceases immediately; and
- 8.8.2 the Supplier may at any time:
- 8.8.2.1 require the Customer to deliver up all Goods in its possession which have not been resold and any Supplier Materials; and
- 8.8.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 8.9 The Customer 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 Customer does so all moneys owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.
- 8.10 Nothing in this clause will confer any right upon the Customer to return the Goods. The Supplier may maintain an action for the price notwithstanding that property in the Goods has not vested in the Customer.

9. WARRANTIES AND LIABILITY RELATING TO THE GOODS

- 9.1 The Supplier warrants that at the time of delivery the Goods will be free from defects in materials and workmanship and will conform to the Supplier's applicable specifications or, if applicable, to the specifications laid down by the Manufacturer or other supplier of the Goods and the Goods Specification (if any). If at such time there are any such defects or the Goods do not conform as aforesaid, or if as a result of the quality or nature of the Goods there is a breach of any implied condition or warranty applicable thereto, the Supplier shall at its option either repair or replace the Goods or issue credit therefor to the Customer, provided that:-
- 9.1.1. the Supplier is notified in writing within 5 Business Days of:
- 9.1.1.1 the date of delivery of such Goods where the defect or failure is apparent on reasonable inspection by the Customer upon delivery; or
- 9.1.1.2 where the defect or failure was not apparent on reasonable inspection by the Customer upon delivery, within 5 Business Days from the date of discovery of such defect by the Customer subject to such notification in

the case of this clause 9.1.1.2 being, in any event, within 20 Business Days of the date of delivery of such Goods.

- 9.1.2. the relevant Goods are returned to the Supplier;
 - 9.1.3. examination of such Goods by the Supplier discloses to its satisfaction that the defect or failure to conform to specifications existed at the time of delivery or that a breach of an implied condition or warranty has occurred as aforesaid, and in particular that the Goods have not been affected by fair wear and tear, misuse, neglect, accident, improper storage, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier 's instructions (whether oral or in writing), installation or handling or by repair or alteration not effected by the Supplier;
 - 9.1.4. the Customer will pay to the Supplier the cost (as determined by the Supplier) of any examination of the Goods as a result of which the Supplier does not admit liability;
 - 9.1.5. the Supplier shall have no liability whatsoever in respect of any defects in the materials or workmanship of the Goods or for Goods which do not conform to the Supplier 's applicable specifications, where the Customer has inspected such Goods prior to delivery and has approved delivery of the Goods subsequent to such inspection;
 - 9.1.6. the Supplier shall be under no liability in respect of any defect in the Goods arising from any drawing, design or Goods Specification supplied by the Customer or as a result of the Goods differing from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
 - 9.1.7. the Supplier shall be under no liability under the warranties in this clause 9 (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment; and
 - 9.1.8. the Supplier has acted in its own capacity in respect of the Contract and not solely as an agent of the Manufacturer.
- 9.2 All implied conditions and warranties other than those arising under section 12 of the Sale of Goods Act 1893 (as amended) are hereby excluded in relation to any parts, components and accessories supplied by, but not manufactured by, the Supplier, but the Supplier will so far as possible pass to the Customer the benefit of any guarantee, condition or warranty given to the Supplier by the Manufacturer.
- 9.3 The Supplier's liability for any claim, whether in contract, tort (including negligence) or otherwise, for any loss or damage arising out of or in connection with or resulting from the manufacture, sale, delivery, resale; replacement or use of any of the Goods will in no case exceed the price paid or payable by the Customer to the Supplier for the Goods which give rise to the claim, plus expenses of customs, taxes, freight and insurance. In no event will the Supplier be liable for any loss of profits, or special indirect or consequential damages suffered by the Customer, including interest charges. Nothing contained in this clause will by implication create any liability or obligation on the part of the Supplier, or affect or diminish any disclaimer or liability elsewhere contained herein.
- 9.4 Except as expressly stated above, all other warranties, conditions and representations, express or implied, statutory or otherwise, in relation to the quality or fitness for any particular purpose of the Goods are hereby excluded, and in no event will the Supplier be liable in contract, tort or otherwise for any loss, damage, expense or injury of any kind whatsoever, consequential or otherwise, arising out of or in connection with the Goods sold or any defect in them or from any other cause, whether or not any such matter amounts to a fundamental breach of a fundamental term of the Contract.

- 9.5 The Supplier's liability under these Conditions will be limited to a period of six months from the date of receipt of the Goods by the Customer.
- 9.6 The Customer shall not reject any Goods or cancel or purport to cancel the Contract or any part of it because of an alleged default unless and until the Supplier, following receipt of written notice from the Customer specifying the default, has failed to correct such alleged default within a reasonable period of time taking into account the original lead and agreed times for the supply of relevant materials.
- 9.7 Nothing in this clause 9 will be taken as in any way limiting or excluding any liability which the Supplier may have to the Customer under Section 2 of the Liability for Defective Products Act 1991.
- 9.8 If delivery is not refused by the Customer, and the Customer does not notify the Supplier accordingly, the Customer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract;
- 9.9 The Supplier shall not be responsible for the installation or maintenance of the Goods or, subsequent to delivery, for any services in respect of the Goods (except where any such service is expressly agreed in writing between the Customer and the Supplier with respect to a particular Contract), and, save for such express agreement, the Supplier shall have no liability in respect of any such installation, maintenance or other such service.
- 9.10 The Supplier shall have no liability in respect of any loss or damage caused by any third party dealing with the Goods at any time, including, for the avoidance of doubt, any third party service provider referred to at clause 9.9 above. It is the responsibility of the Customer to ensure that all such third parties maintain sufficient levels of insurance and the Customer shall indemnify and keep indemnified the Supplier against all damages, penalties, costs and expenses to which the Supplier may become liable as a result of actions by or in connection with any such third party.
- 9.11 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier 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 reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 9.11 shall survive termination of the Contract.

10. WARRANTIES AND LIABILITY RELATING TO THE SERVICES

- 10.1 The Supplier shall provide the Services to the Customer in accordance with the Services Specification in all material respects.
- 10.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Services Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 10.3 The Supplier 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 the Supplier shall notify the Customer in any such event.
- 10.4 The Supplier warrants to the Customer that the Services will be provided using due care, skill and diligence in accordance with Section 39 of the Sale of Goods and Supply of Services Act 1980 (as amended).

- 10.5 The Customer shall:
- 10.5.1 ensure that the terms of the order and (if submitted by the Customer) the Services Specification are complete and accurate;
 - 10.5.2 co-operate with the Supplier in all matters relating to the Services;
 - 10.5.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - 10.5.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 10.5.5 prepare the Customer's premises for the supply of the Services;
 - 10.5.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 10.5.7 keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- 10.6 The provisions of clause 9 (which apply in relation to the sale of Goods) shall apply to the supply of the Services with any required modifications relating to a contract for the supply of Services as if each clause and sub clause thereof were set out herein *mutatis mutandis* and each reference to "Goods" shall be construed as a reference to the Services, each reference to "Goods Specification" shall be construed as a reference to the Services Specification and each reference to "delivery of Goods" shall be construed as a reference to completion of the Services. Without prejudice to the generality of the foregoing, in the application of the above provision to clause 9.3 the maximum liability of the Supplier in relation to a Contract for the sale of both Goods and the supply of Services shall be the price paid or payable by the Customer for the Goods and the Services under the Contract.

11. TERMINATION

- 11.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 11.1.1 the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 5 Business Days after receipt of notice in writing to do so;
 - 11.1.2 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 570 of the Companies Act 2014;
 - 11.1.3 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

- 11.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 11.1.5 the Customer (being an individual or a partnership) is the subject of a bankruptcy petition or order against the individual or a partner;
 - 11.1.6 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 10 Business Days;
 - 11.1.7 an application is made to court, or an order is made, for the appointment of an examiner or if a notice of intention to appoint an examiner is given or if an examiner is appointed over the Customer (being a company);
 - 11.1.8 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
 - 11.1.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1.2 to clause 11.1.8 (inclusive);
 - 11.1.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - 11.1.11 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - 11.1.12 the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes subject to a mental disorder within the meaning of the Mental Health Act 2001.
- 11.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 11.3 Without limiting its other rights or remedies, the Supplier may suspend all further deliveries of Goods and/or the provision of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 11.1.2 to clause 11.1.12, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 11.4 On termination of the Contract for any reason:
- 11.4.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied or Services provided but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 11.4.2 the Customer shall return all of the Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;

11.4.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

11.4.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11.5 In the event the Supplier exercises any rights it may have to stop Goods in transit following a termination of the Contract under this clause, the Supplier may at its option resell such Goods at public or private sale without notice to the Customer and without affecting the Supplier's rights to hold the Customer liable for any loss or damage caused by breach of Contract by the Customer.

12. INFRINGEMENT

The Customer will indemnify the Supplier against all damages, penalties, costs and expenses to which the Supplier may become liable as a result of Services provided Goods sold or work done in accordance with a Services Specification or a Goods Specification provided by the Customer or the Customer's specifications which involves the infringement of any third party Intellectual Property Rights.

13. FORCE MAJEURE

13.1 The Supplier shall not be liable to the Customer in any way whatsoever or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations in relation to the Goods or the Services, if the delay or failure was due to any cause beyond the Supplier's control or beyond the control of the Supplier's suppliers. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Supplier's control:

13.1.1. act of God, explosion, flood, tempest, fire or accident;

13.1.2. war or threat of war, sabotage, insurrection, riot, civil disturbance or requisition;

13.1.3. judicial actions or acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority or any agency or sub-division thereof;

13.1.4. import or export regulations or embargoes;

13.1.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a third party);

13.1.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;

13.1.7. power or technical failure or breakdown in machinery;

13.1.8. delay in delivery to the Supplier or the Supplier's suppliers; and

13.1.9. acts of the Customer or a third party.

14. CONFIDENTIALITY

The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents or subcontractors, and any other confidential information concerning the Supplier's business, its products and services which the Customer may obtain. The Customer shall only disclose such confidential information to those of its employees, agents and

subcontractors who need to know it for the purpose of discharging the Customer's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Customer may also disclose such of the Supplier's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 13 shall survive termination of the Contract.

15. GENERAL

- 15.1 The Customer will not assign or transfer or purport to assign or transfer to any other person the Contract or the benefit thereof or the benefit of any condition, warranty or guarantee or other term or condition (express or implied) forming part thereof or relating to the Goods or the Services.
- 15.2 Subject as hereinafter provided, any dispute arising under or in connection with these Conditions, the Contract or the sale of the Goods or supply of the Services where the amount or value of the dispute exceeds €20,000 (excluding any VAT) shall be referred to arbitration under the Arbitration Act 2010 for determination by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society in Ireland provided always that nothing in this clause shall prevent either party from invoking the jurisdiction of the Courts of the Republic of Ireland for the purposes of seeking injunctive or any other form of equitable relief.
- 15.3 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.
- 15.4 A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 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 and the remainder of the provision in question shall not be affected.
- 15.6 This Contract will be governed and construed in all respects in accordance with the laws of the Republic of Ireland.
- 15.7 The Supplier and the Customer irrevocably agree that, subject to clause 15.2, the courts of the Republic of Ireland shall have non exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Conditions, or the Contract or its subject matter or formation (including non-contractual disputes or claims) or the sale of the Goods or the supply of the Services.

September 2015

SCHEDULE

DEFINITIONS AND RULES OF CONSTRUCTION

1.1 **Authorised Representative** means, in the case of the Supplier, any person duly authorised by the board of directors of the Supplier from time to time to enter into Contracts with Customers, confirm acceptance of written orders from Customers, agree to variations of the terms of a particular Contract (including the Conditions applicable thereto) with a Customer or take any other action specified in these Conditions as being the responsibility of the Authorised Representative of the Supplier and, in the case of the Customer, means the person(s) duly authorised by the Customer to do any of the above on behalf of the Customer;

Business Day means a day other than a Saturday, Sunday or public holiday in the Republic of Ireland when banks in Dublin are open for business;

Conditions means the standard terms and conditions set out in this document together with, in respect of a Contract, any special terms and conditions agreed in writing between the Customer and the Supplier in respect of such Contract;

Contract means a Contract between the Customer and the Supplier for the sale and purchase of Goods and/or Services in accordance with the Conditions and **Contracts** shall be construed accordingly;

Customer means any natural person (being any individual) or body corporate or unincorporated body (whether or not having separate legal personality) who accepts a quotation of the Supplier for the sale of Goods and/or Services or whose order for Goods and/or Services is accepted by the Supplier;

Deliverables the deliverables set out in the Contract;

Goods means the Goods to be supplied by the Supplier to the Customer in accordance with these Conditions;

Goods Specification means any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier or provided in writing by the Supplier to the Customer;

Intellectual Property Rights patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Manufacturer means any natural or legal person who manufactures Goods which are the subject of these Conditions;

Services the services including the Deliverables, supplied by the Supplier to the Customer as set out in the Services Specification;

Services Specification the description or specification for the Services, including any plans or drawings, that is agreed in writing by the Customer and the Supplier or provided in writing by the Supplier to the Customer;

Supplier means Advantage Engineering Limited (CRO No. 492277) whose registered address is at Unit 1, Cessna Avenue, Airport Business Park, Co. Waterford, Ireland;

Supplier Materials has the meaning set out in clause 10.2.6.

- 1.2 Any reference in these Conditions to any provision of a statute including, for the avoidance of doubt, the Sale of Goods Acts 1893 and 1980, shall be construed as a reference to such provision as amended, re-enacted or extended at the relevant time.
- 1.3 The contractual rights which the Customer enjoys by virtue of sections 12, 13, 14 and 15 of the Sale of Goods Act 1893 (as amended) are in no way prejudiced by anything contained in these Conditions save (if the Customer is not dealing as consumer or in the case of an international sale of Goods) to the extent permitted by law.
- 1.4 Any typographical, clerical or other administrative error or omission in any sales literature, website, quotation, price list, acceptance of offer, invoice or other document or information issued, published or otherwise made available by the Supplier shall be subject to subsequent correction without any liability on the part of the Supplier.
- 1.5 No variation to these Conditions shall be binding unless agreed in writing between the Authorised Representatives of the Customer and Supplier.
- 1.6 Headings in this document are for convenience only and shall have no effect on the interpretation of the terms contained herein.
- 1.7 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.8 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.9 A reference to **writing** or **written** includes faxes and emails.