

## STANDARD TERMS AND CONDITIONS

**THE CUSTOMER'S SPECIAL ATTENTION IS DRAWN TO CLAUSES 3, 6 – 8, 10, 13 AND 15 OF THESE TERMS**

### 1. DEFINITIONS & INTERPRETATION

1.1 In these Terms, the following definitions apply:

**Applicable Laws:** all applicable laws, statutes, regulations and codes from time to time in force.

**Arbitration Rules:** the ICC Arbitration Rules.

**Brexit:** the UK ceasing to be a member state of the EU and ceasing to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the EU negotiated under Article 50(2) of the Treaty of the EU which sets out the arrangements for the UK's withdrawal from the EU.

**Brexit Notice:** has the meaning given in clause 16.2.

**Brexit Trigger Event:** means any of the following events whenever occurring at any time as a direct or indirect consequence of Brexit:

- (a) an adverse impact on the Supplier's ability to perform the Contract in accordance with its terms and the law; or
- (b) an increase in the costs incurred by the Supplier in performing the Contract since the date of the Contract.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Business Hours:** means the hours between 9:00am and 5:00pm on a Business Day.

**Change:** an amendment to:

- (a) the scope, nature, volume or execution of the Goods and/or Services under this Contract; or
- (b) any other term of this Contract.

**Change Control Note:** the written record of any Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

**Change Control Procedure:** the procedure for agreeing a Change, as set out in clause 1. **Error! Reference source not found.**

**Charges:** means the charges for the provision of the Goods and/or Services and delivery charges, as set out in the Proposal (or otherwise varied in accordance with these Terms) and any other charges to be paid by the Customer to the Supplier in accordance with these Terms.

**Confidential Information:** has the meaning given in clause 14.1.

**Contract:** the contract between the Supplier and the Customer for the provision of Services and sale of Goods incorporating the Proposal and these Terms.

**Customer:** the business to which the Supplier provides the Goods and/or Services.

**Deliverables:** means any and all data, designs, drawings, images, information, materials, plans, specifications or other documentation produced by or on behalf of the Supplier in the course of performing its obligations under this Contract and in whatever form or media they may be.

**Despatch:** means the Goods leaving the Supplier's premises.

**Equipment:** any equipment, jigs, moulds, models or tooling provided by the Customer (or a third party acting on its instructions) which is used directly or indirectly in the supply of the Goods and/or Services and including any items provided on loan to the Supplier.

**EU:** means the European Union.

**Force Majeure Event:** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or

military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters, extreme or adverse weather conditions, or (in the case of the Supplier) default of suppliers or subcontractors or any event arising out of or in connection with Brexit.

**Free Issue Materials:** any materials, goods, items, fixtures and fittings made available to the Supplier by the Customer (or a third party acting on its instructions) on a 'free issue basis' for incorporation into the Goods and/or to be the subject of the Services.

**Goods:** the goods or any part of them (if any), which are the subject of the Services and which have either been provided to the Supplier by the Customer on a free issue basis or which are otherwise supplied by the Supplier.

**ICC:** the International Chamber of Commerce.

**Installation:** means the installation of the Goods at the Site by the Supplier.

**Intellectual Property Rights:** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

**IPRs Claim:** has the meaning given in clause 12.5(a).

**Literature:** the Supplier's catalogues, brochures, websites or such other applicable sales or promotional literature, materials or publications.

**Loss:** actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, liabilities, losses, penalties, proceedings and settlements and **Losses** shall be construed accordingly.

**Mediation Rules:** the ICC Mediation Rules.

**Order:** the Customer's written purchase order (in whatever form this may be and which shall for the avoidance of doubt include email) for the Services, raised in response to the Proposal and in accordance with clause 2 below.

**Order Confirmation:** the written acceptance of the Order issued by the Supplier.

**Order Period:** has the meaning given in clause 2.2.

**Proposal:** the Supplier's written proposal or quotation to provide the Goods and/or Services to the Customer incorporating these Terms.

**Services:** means the manufacturing, fabrication and/or engineering services or such other services, in each case as set out in the Proposal.

**Site:** means any location(s), owned, occupied or accessed by the Customer and which the Supplier needs to access for the purposes of performing any of its obligations in accordance with this Contract.

**Specification:** any specification including any related data, designs, drawings, images, information, materials, plans or other documentation in whatever form or media they may be against which the Goods and/or Services shall be supplied.

**Supplier:** **Sherburn Metalwork Ltd**, a company incorporated and registered in England and Wales with company number **07724596** and whose registered office is at Britannia House, Junction Street, Darwen, Lancashire, BB3 2RB.

**Terms:** the terms and conditions set out in this document as amended from time to time.

**UK:** means the United Kingdom.

**VAT:** has the meaning given in clause 9.5.

**Warranty Period:** has the meaning given in clause 8.3.

- 1.2 In these Terms, the following rules of interpretation apply:
- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - (b) a reference to a party includes its personal representatives, successors or permitted assigns;
  - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
  - (d) 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;
  - (e) a reference to **writing** or **written** includes faxes and emails; and
  - (f) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.3 In the event of any inconsistency between the provisions of:

- (a) the Proposal;
- (b) these Terms;
- (c) the Specification; and
- (d) the Order,

the document appearing first in the list above shall to the extent of the inconsistency take precedence.

## **2. FORMATION & BASIS OF THE CONTRACT**

- 2.1 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 In advance of submitting any Proposal to the Customer, the Customer shall furnish the Supplier with the Specification or any or all information required by the Supplier in order to prepare the Specification. The Proposal shall remain valid for a period of thirty (30) days from the date specified on it (**Order Period**) and if the Customer accepts the position set out in the Proposal then it shall be required to raise an Order within the Order Period.
- 2.3 The Order constitutes an offer by the Customer to enter into a Contract in accordance with these Terms and shall not incorporate any other terms and conditions beyond those set out in the Contract. The Customer is responsible for ensuring that the terms of the Proposal, the Order and any applicable Specification are true, complete and accurate and by raising an Order warrants that this is the case in every respect.
- 2.4 Where there are any errors and/or omissions in the Proposal and/or Specification, the Customer shall notify the Supplier such that it may make any appropriate amendments and reissue the same.
- 2.5 The Supplier may reject the Order at its absolute discretion and for any reason whatsoever and the Order shall only be deemed to be accepted at the earlier of when the Supplier:
- (a) commences with the performance of the Services or supply of the Goods; or
  - (b) issues an Order Confirmation,
- at which point the Contract shall come into existence.
- 2.6 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions, colours or illustrations contained in the Literature are produced for the sole purpose of giving an approximate idea of the Goods and/or Services. They shall not form part of the Contract or have any contractual force.

## **3. GENERAL OBLIGATIONS OF THE CUSTOMER – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**

3.1 The Customer shall:

- (a) co-operate fully with the Supplier in connection with any and all reasonable requests connected with this Contract;

- (b) supply any requisite Equipment and warrants that in doing so all such Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant standards, requirements and Applicable Laws;
- (c) obtain and maintain all necessary licenses and consents as required to enable the Supplier to perform the Services, in all cases prior to the commencement of the Services; and
- (d) comply with all Applicable Laws:
  - (i) to enable the Supplier to provide the Goods and/or perform the Services; and
  - (ii) in connection with health and safety matters relating to the Goods, including regulations under the Environmental Acts, Factories Acts, Health and Safety at Work Act and observance of the Road Traffic Acts (where and to the extent applicable).

3.2 The Customer agrees and acknowledges that the Supplier may need further information relating to the Specification from time to time and shall provide the same to the Supplier in a timely manner or within any timescales prescribed by the Supplier.

3.3 If the Customer is not fully familiar with the Goods, the Supplier advises that the Customer to contact the Supplier for the appropriate operating instructions. It is the Customer's responsibility to ensure that the persons using the Goods have received the appropriate instructions, information and training on any Applicable Laws.

3.4 The Customer agrees and acknowledges that time for performance of any of its obligations shall be of the essence and that the Supplier shall:

- (a) be afforded a reasonable extension of time to any projected timescales or delivery dates (taking into account, amongst other things, the Supplier's then current workload; and
- (b) not be liable for any Losses suffered or incurred by it or any third party (including any liquidated damages or otherwise),

as a result of any failure or delay by it or any third party acting for it or on its behalf to comply with any of its obligations under this Contract.

#### **4. PERFORMANCE OF THE SERVICES**

4.1 The provision of the Services:

- (a) shall be performed by the Supplier in accordance with these Terms in all material respects using reasonable care and skill and in accordance with good industry practice; and
- (b) may be carried out in any number of stages.

4.2 The Supplier shall use reasonable endeavours to meet any projected dates, timescales and deadlines for completion of the Services and subsequent delivery of the Goods (if any) but for the avoidance of doubt time for completion of the Services (or any particular part of them including the supply of any Deliverables) and subsequent delivery of the Goods shall not be of the essence.

4.3 The Supplier reserves the right to amend the Specification if required by any Applicable Law from time to time in force or to improve the Goods and/or Services where to do so would not have an adverse effect on the Customer.

4.4 Where the Supplier needs to access the Site in connection with the performance of the Services, the Customer shall:

- (a) provide the Supplier and its personnel with safe access to, movement around and egress from the Site;
- (b) supply the Customer with a copy of any or all local safety arrangements or policies, details of any requirements for induction or training and such other information that it may reasonably need which may affect the performance of its obligations in any way, in advance of the Supplier's attendance at the Site.

#### **5. INSPECTION & TESTING**

5.1 Upon completion of the Services, the Supplier shall carry out tests and inspections of the Services and/or Goods against the Specification and the obligations imposed upon it by this Contract. Where:

- (a) there are any defects with the Goods established by the Supplier in performing such testing and inspection it shall remedy the same in advance of delivery; or

- (b) the Goods are found to meet the applicable requirements, it shall proceed with delivery in accordance with clause 7.

5.2 In the event that the Customer (or any of its customers) wish to attend at the Supplier's premises to witness the inspection and testing to be carried out by the Supplier in accordance with this clause, it must provide written notice to the Supplier. The Supplier reserves the right to reject such request at its absolute discretion and shall only be required to permit the Customer (or any of its customers) to witness such inspection and testing during Business Hours and where this would not cause any disruption to the Supplier's business activities or expose any of its Confidential Information.

## **6. EQUIPMENT & FREE ISSUE MATERIALS – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**

6.1 The Customer warrants and undertakes that:

- (a) any Equipment and Free Issue Materials shall be delivered DDP (Incoterms 2020) to the Supplier's address as notified to the Customer in advance of delivery; and
- (b) as at the date of delivery of any Equipment and Free Issue Materials, the same have been assessed for suitability by the Customer and shall be of the best quality, new, manufactured, engineered, supplied and tested in accordance with best industry practice, damage and defect free and remain so for such period of time as the same are required to be used by the Supplier and subsequently by the Customer following supply.

6.2 In the event that the Supplier is unable to perform or delayed in the performance of its obligations under this Contract as a result of a breach by the Customer of the warranty in clause 6.1 above, it shall not be liable to the Customer or any third party for any Losses suffered in any way as a result and the remedy of any such breach shall be at the Customer's cost.

6.3 The Equipment and Free Issue Materials shall be held at the custody of the Supplier at the risk of the Customer and the Customer shall insure the Equipment and Free Issue Materials at its own expense against any and all Loss from all risks in an amount equal to their full new replacement value during that period.

6.4 Subject to clause 6.3, in the event of any damage to or destruction of the Equipment or Free Issue Materials caused by the Supplier's negligence in performing the Services or wilful default, the Customer shall, at the Supplier's absolute discretion be required to replace them and supply replacement Equipment or Free Issue Materials to the Supplier either:

- (a) free of charge and in which case and for the avoidance of doubt, the Supplier shall not be liable to the Customer whatsoever; or
- (b) for a sum equivalent to the replacement cost price of the applicable Equipment or Free Issue Materials and in which case and for the avoidance of doubt, the Supplier shall not be liable to the Customer for a sum exceeding that amount.

## **7. DELIVERY OF THE GOODS – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**

7.1 The Supplier shall ensure that:

- (a) each delivery of the Goods following the completion of the Services (or a part thereof) is accompanied by a delivery note which shows all relevant Customer and the Supplier's reference numbers, the Goods being delivered, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Supplier shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request.

7.2 Unless it has been agreed that the Customer shall collect the Goods, the Supplier (or, where appropriate, the instructed carrier) shall deliver the Goods to the destination set out in the Proposal or such other location as the parties may agree in writing.

7.3 Unless otherwise agreed, delivery of the Goods shall be on the basis of:

- (a) EXW at the Supplier's address as detailed in the Proposal or otherwise notified to the Customer in advance of delivery taking place (Incoterms 2020) where the destination for the Goods is in UK; or
- (b) FCA at the Supplier's address as detailed in the Proposal or otherwise notified to the Customer in advance of delivery taking place (Incoterms 2020) where the destination for the Goods is not in the UK.

- 7.4 Any dates quoted for delivery are approximate only and the Supplier is under no obligation to provide an estimated delivery time. If a quoted date for delivery is not provided, delivery will be made within a reasonable time. The time of delivery in accordance with any timescales is not of the essence.
- 7.5 The Supplier shall not be liable for Losses arising out of any delay in delivery of the Goods that is caused by a Force Majeure Event suffered by it or an instructed carrier or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the delivery of the Goods.
- 7.6 If the Customer fails to take delivery during Business Hours, the Supplier shall be entitled to store the Goods at any convenient location and charge the Customer for all related costs and expenses of storage and insurance.
- 7.7 If (30) days after the day on which the Supplier notified the Customer that the Goods were ready for collection or attempted to make delivery, the Supplier may resell or otherwise dispose of part or all of the Goods.
- 7.8 The Supplier may deliver the Goods by instalments, which may be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 7.9 If the cost of delivery is not specified in the Proposal, the Supplier shall charge its standard delivery cost from time to time, applicable as at and confirmed in advance of Despatch.

## **8. QUALITY, INSPECTION & ACCEPTANCE – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**

8.1 The Customer shall, notwithstanding that the Goods and inherent Services may have passed the Supplier's testing and inspection in accordance with clause 5, be required to inspect the Goods and inherent Services immediately upon receipt. In the event that:

- (a) there are any damages or defects in the Goods; or
- (b) an incorrect quantity of the Goods has been received; or
- (c) anything other than the Goods are received,

the Customer shall be required to notify the Supplier within two (2) Business Day of receipt. Where no such notification is made by the Customer to the Supplier in accordance with this clause, the Goods and therefore the Services shall be deemed to have been accepted in all respects by the Customer.

8.2 For the purposes of clause 8.1, receipt shall mean:

- (a) (where no Installation is required):
  - (i) Despatch, where the Customer collects the Goods from the Supplier's premises; or
  - (ii) the arrival of the Goods at their destination, where the Customer does not collect the Goods from the Supplier's premises; or
- (b) (where Installation of the Goods is required) the date of Installation.

8.3 Without prejudice to clause 8.1, the Supplier warrants that on delivery, and (where applicable) for such additional period of time as may be specified in the Proposal (**Warranty Period**), the Goods (and the inherent Services) shall:

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by the Supplier.

8.4 Subject to clause 8.5, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 8.3;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier and where reasonably practicable) returns such Goods to the Supplier's place of business at the Customer's cost (such reasonable return costs to be refunded to the Customer if the Goods are found to not comply with the warranty set out in

clause 8.3),

the Supplier shall, at its option, repair or replace the defective Goods (including by performing any defective element of the Services), or refund the price (or a proportionate part) of the defective Goods in addition to any reasonable return costs in accordance with clause 8.4(c).

8.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 8.3 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 8.3;
- (b) the defect arises because the Customer failed to follow the Supplier's (or the manufacturer's) oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any Specification;
- (d) the Customer (or a third party acting on its behalf or under its instruction) alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description and any Specification provided as a result of changes made to ensure they comply with Applicable Laws.

8.6 Except as provided in this clause 8, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 8.3 save that where the parties have agreed otherwise in writing, the Supplier may carry out repair work to such Goods falling under clause 8.5 at an additional charge.

8.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

8.8 These Terms shall apply to any repaired or replacement Goods (and where applicable the inherent re-performed Services) supplied by the Supplier. Any Warranty Period shall not be extended by virtue of the Supplier providing any repair or replacement.

## **9. CHARGES & PAYMENT**

9.1 The Charges payable under this Contract are as set out in the Proposal, or, if not quoted, that set out in the Literature or the Supplier's published price list in force as at the date of formation of the Contract.

9.2 The Supplier may, by giving notice to the Customer at any time up to five (5) Business Days before commencement of its obligations under these Terms, increase the Charges to reflect any increase that is due to any:

- (a) factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) request by the Customer to change the delivery date(s) for the Goods, completion date for the Services or the Customer Specification; or
- (c) delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions,

provided that upon receipt of such notice the Customer shall be afforded with the opportunity to reject the change and cancel the Contract provided that it notifies the Supplier in advance of the applicable period referred to above in this clause.

9.3 Where performance of the Services has commenced, the Customer agrees that the Supplier may increase the Charges in line with its standard scale of charges where:

- (a) additional services beyond the Services are required to be carried out by the Supplier; or
- (b) any of the factors set out in clause 9.2 occur.

9.4 Unless otherwise agreed between the parties, the price of the Services is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

9.5 The Charges are exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect

of VAT as are chargeable on the provision of the Services.

- 9.6 Unless otherwise specified in the Proposal, the Customer shall pay any and all invoices raised by the Supplier from time to time in full and in cleared funds within thirty (30) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment in accordance with this clause is of the essence.
- 9.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time and such other sums as may be due under the Late Payment of Commercial Debts Regulations 2013. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

#### **10. TITLE & RISK – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**

- 10.1 Title to any Free Issue Materials shall pass to the Supplier upon receipt in its custody.
- 10.2 Title to the Goods shall not pass to the Customer until the earlier of:
- (a) the Supplier receiving payment in full (in cash or cleared funds) for the Services and/or Goods; or
  - (b) the Customer reselling the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 10.5 and the proceeds of sale shall be immediately accounted to the Supplier and otherwise held in a fiduciary capacity on trust for the Supplier to the extent of any liability for unpaid sums.
- 10.3 In the event that delivery has taken place prior to title to the Goods passing from the Supplier the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.1(c)-(h); and
  - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 10.4 Subject to clause 10.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as the Supplier's agent; and
  - (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Supplier occurs.
- 10.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.1(c)-(h), or the Customer fails to fulfil its payment then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
  - (b) the Supplier may at any time:
    - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (ii) 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.

10.6 In the event where title has not yet passed to the Customer and the Customer wishes to incorporate the Goods into the assembly of other goods, the Supplier will allow this to the extent that such assembly does not result in the Goods being altered by a manufacturing process and the Goods remain recoverable by disassembly. In all circumstances where the Goods are incorporated, clauses 10.2, 10.3(b) – (e), 10.4 and 10.5 shall apply.

## **11. CHANGE CONTROL PROCEDURE**

11.1 Either party may submit a written request for Change to the other party in accordance with this clause, but no Change will come into effect until a Change Control Note has been signed by the authorised representatives of both parties.

11.2 If the Customer requests a Change:

- (a) the Customer will submit a written request to the Supplier containing as much information as is necessary to enable the Supplier to prepare a Change Control Note; and
- (b) within a reasonable period of receipt of a request, the Supplier will, unless otherwise agreed, send to the Customer a Change Control Note.

11.3 If the Supplier requests a Change, it will send to the Customer a Change Control Note.

11.4 A Change Control Note must contain sufficient information to enable the Customer to assess the Change, including as a minimum:

- (a) the title of the Change;
- (b) the originator of the Change and date of request;
- (c) description of the Change;
- (d) details of the effect of the proposed Change on:
  - (i) the Goods and/or Services;
  - (ii) the Charges;
  - (iii) any systems or operations of the Customer which communicate with, or are otherwise affected by, the Goods and/or Services; and
  - (iv) any other term of this agreement;
- (e) the date of expiry of validity of the Change Control Note; and
- (f) provision for signature by the Customer and Supplier.

11.5 If, following the Customer's receipt of a Change Control Note pursuant to clause 11.2 or clause 11.3:

- (a) the parties agree the terms of the relevant Change Control Note, they will sign it and that Change Control Note will amend this agreement; or
- (b) either party does not agree to any term of the Change Control Note, then the other party may refer the disagreement to be dealt with in accordance with the dispute resolution procedure set out in these Terms.

11.6 Each party will bear its own costs in relation to compliance with the Change Control Procedure.

## **12. INTELLECTUAL PROPERTY RIGHTS**

12.1 In relation to the Goods, Services or Deliverables:

- (a) the Supplier and its licensors shall retain ownership of any and all Intellectual Property Rights;
- (b) the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this Contract to copy the Deliverables strictly for the purpose of receiving the Services and using the Goods in its business; and
- (c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 12.1(b) to third parties.

12.2 The Supplier shall have no liability whatsoever to the Customer for any Loss arising out of or otherwise suffered by the Customer or any third party through their use of any of its Intellectual Property Rights for purposes other than those provided for under this Contract or otherwise in conjunction with any third party.

- 12.3 In relation to any portion of the Specification supplied to the Supplier by the Customer, the Customer:
- (a) and its licensors shall retain ownership of all Intellectual Property Rights in the Specification; and
  - (b) grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Specification for the purpose of performing its obligations under this Contract,

provided and to the extent that the Specification is generic and contains no substantive, protectable or legitimate Intellectual Property Rights nothing in these Terms shall prevent or restrict the Supplier from producing similar Goods or carrying out similar Services for any other third party.

- 12.4 The Customer:

- (a) warrants that the receipt and use of the Specification in the performance of its obligations under this Contract by the Supplier, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify, keep indemnified and hold harmless the Supplier in full from and against any and all Losses suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's rights, including any Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Specification.

- 12.5 If the Customer is required to indemnify under this clause 12, the Supplier shall:

- (a) notify the Customer in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 12.4(b) (**IPRs Claim**);
- (b) allow the Customer, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Customer shall the Supplier's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Customer with such reasonable assistance regarding the IPRs Claim as is required by the Customer, subject to reimbursement by the Customer of the Supplier's costs so incurred; and
- (d) not, without prior consultation with the Customer, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Customer considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Supplier into disrepute.

### **13. LIMITATION OF LIABILITY & INDEMNITY – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**

- 13.1 Nothing in these Terms shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation; or
- (c) any other matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

- 13.2 The exclusions and limitations of liability referred to in this clause 13.2 shall apply, whether the Losses arose in contract, tort (including negligence), breach of statutory duty or otherwise and whether or not the Losses were foreseeable or in the contemplation of the parties. Subject to clause 13.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer for any:
  - (i) loss of profit;
  - (ii) loss of goodwill or reputation;
  - (iii) loss of business;
  - (iv) loss of business opportunity;
  - (v) loss of anticipated saving;
  - (vi) loss or corruption of data or information; or
  - (vii) any indirect, special or consequential Loss,that arises under, in connection with or otherwise arising out of the Contract; and

- (b) the Supplier's total liability to the Customer in respect of all other Losses arising under or in connection with the Contract:
  - (i) which specifically relate to an item of Goods, shall in no circumstances exceed the Charges paid or payable under the Contract, attributable to the specific item of Goods to which the liability relates; or
  - (ii) which do not fall under clause 13.2(b)(i), shall in no circumstances exceed the aggregate sum of £50,000.

13.3 The Customer shall indemnify, keep indemnified and hold harmless the Supplier in full from and against any and all Losses suffered or incurred by the Supplier or arising out of or in connection with the acts or omissions (including any breach of or delay in complying with the obligations imposed by this Contract) by the Customer and any third party acting for it or on its behalf, whether in contract, tort (including negligence), breach of statutory duty or otherwise and whether the same are classified as:

- (a) loss of profit;
- (b) loss of goodwill or reputation;
- (c) loss of business;
- (d) loss of business opportunity;
- (e) loss of anticipated saving;
- (f) loss or corruption of data or information;
- (g) direct Loss; or
- (h) indirect, special or consequential Loss.

#### **14. CONFIDENTIALITY**

14.1 The receiving party (**receiving party**) 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 receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services, suppliers, customers, prices, strategy, Intellectual Property Rights or any other information which the disclosing party would reasonably deem as confidential, which the receiving party may obtain (**Confidential Information**).

14.2 The receiving party 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 receiving party'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.

14.3 The receiving party may also disclose such of the disclosing party's Confidential Information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

14.4 This clause shall survive termination of the Contract.

#### **15. TERMINATION – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**

15.1 The Supplier may terminate the Contract forthwith by written notice and without liability to the Customer if one or more of the following events occur:

- (a) the Customer fails to collect the Goods within 30 days of Despatch or being made available for collection;
- (b) the Customer defaults in punctual payment of any Charges due to the Supplier;
- (c) the Customer fails to observe and perform any provision of the Contract;
- (d) 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 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (e) the Customer 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;

- (f) the Customer takes any step or action in connection with the Customer being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his 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;
- (g) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (h) 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 or the Supplier's rights in the Goods may be prejudiced or placed in jeopardy; or
- (i) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

#### 15.2 The rights to terminate under this Contract:

- (a) may be exercised notwithstanding that the Supplier may have waived some previous default or matter of the same or a like nature; and
- (b) shall if exercised:
  - (i) have the effect of bringing any and all licences granted by the Supplier to the Customer to an end; and
  - (ii) shall not affect the Supplier's right to claim damages for breach of Contract or recover any sums due under the Contract as a debt.

15.3 In any event where it has the right to terminate the Contract, the Supplier has the right to suspend performance of its obligations under the Contract. The right to suspend may be exercised on immediate notice in writing of the Supplier's intention to suspend performance, stating the ground or grounds on which the Supplier intends to suspend performance. The right to suspend performance will cease when the Customer makes payment in full of the amount due.

15.4 In the event of termination of this Contract for any reason, the Supplier shall raise an invoice in respect of the Goods and/or Services provided and/or carried out up to the date of termination, as reasonably determined by it.

15.5 Termination of this Contract for any reason is without prejudice to the accrued rights and remedies of either party.

15.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 16. BREXIT

16.1 If a Brexit Trigger Event occurs, the Supplier shall be permitted to:

- (a) increase the prices of any Goods and/or Services, delivery, performance or otherwise to account for any additional charges, fees, costs or expenses suffered or incurred by it;
- (b) extend any period for delivery of Goods and/or the performance of Services by any period of time for which its performance of its obligations is delayed or impaired;
- (c) require the Customer to negotiate in good faith an amendment to this agreement to alleviate the Brexit Trigger Event, in accordance with clause 16.2; and
- (d) if renegotiation fails, terminate the Contract in accordance with clause 16.3.

16.2 The Supplier party may initiate a negotiation under clause 16.1(a) by serving a notice (**Brexit Notice**) to the Customer giving reasonable details of the relevant Brexit Trigger Event. On delivery of a Brexit Notice:

- (a) the parties shall meet either in person or remotely within 7 days of the date of the Brexit Notice and as reasonably necessary thereafter to discuss in good faith amendments to the Contract to

alleviate the impact of the Brexit Trigger Event;

- (b) the Supplier shall provide information and documents, which in the sole opinion of the Supplier relate to the Brexit Trigger Event, to the Customer provided always that information so disclosed shall be the Supplier's Confidential Information for the purposes of clause 14; and
  - (c) any amendments to the Contract shall be recorded in accordance with clause 26.
- 16.3 If the parties fail to agree a variation in accordance with clause 16.2 within 30 days of the date of the Brexit Notice, the Supplier may, without affecting any other right or remedy available to it, terminate the Contract by giving the Customer not less than 2 weeks' written notice. On termination under this clause, clause 15 shall apply.
- 16.4 After delivery of a Brexit Notice, until the Contract is varied under clause 16.2 or terminated under clause 16.3, the parties shall, unless prohibited by law, continue to comply with the Contract.
- 16.5 Save as expressly provided in this clause 16, a Brexit Trigger Event shall not terminate or alter (or give either party a right to terminate or alter) the Contract or invalidate any of terms therein or discharge or excuse performance under it.
- 16.6 If there is an inconsistency between the provisions of this clause and any other provision of these Terms, the provisions of this clause 16 shall prevail.

## **17. NOTICES**

- 17.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or email.
- 17.2 A notice or other communication shall be deemed to have been received:
- (a) if delivered personally, when left at the address referred to in clause 17.1;
  - (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second (2<sup>nd</sup>) Business Day after posting; or
  - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one (1) Business Day after transmission.
- 17.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## **18. FORCE MAJEURE**

- 18.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from a Force Majeure Event.
- 18.2 The Customer shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 18.3 If a Force Majeure Event prevents, hinders or delays the Customer's performance of its obligation for a continuous period of more than thirty days, the Supplier may terminate the Contract immediately by giving written notice to the Customer.

## **19. ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier including, for the avoidance of doubt, the information included in the Literature which is not set out in the Contract.

## **20. ASSIGNMENT AND OTHER DEALINGS**

- 20.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 20.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

## **21. SEVERANCE**

- 21.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 21.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **22. WAIVER**

A waiver of any right or remedy under the Contract or law 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 a party 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 prevent or restrict the 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.

## **23. RIGHTS AND REMEDIES**

No right or remedy conferred upon or reserved to the Supplier by these Terms is exclusive of any other right or remedy in these Terms provided or permitted by law, and each shall be cumulative of every other right or remedy now or in the future existing and may be enforced by the Supplier concurrently or from time to time.

## **24. THIRD PARTY RIGHTS**

Save to the extent provided for in these Terms, any person who is not a party to the Contract shall not have any rights to enforce its terms.

## **25. FURTHER ASSURANCE**

The Customer shall, whenever requested by the Supplier, execute such documents and do such acts and things as the Supplier may require to give full effect to the Contract.

## **26. VARIATION**

Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.

## **27. MULTI-TIERED DISPUTE RESOLUTION**

- 27.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in this Contract, the parties may at their discretion follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, employees at management level (or the nearest equivalent) of the parties shall attempt in good faith to resolve the Dispute; and
  - (b) if the management level employees are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the directors of the parties who shall attempt in good faith to resolve it.
- 27.2 If the directors of the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them and the Customer is not registered in the UK, the parties will attempt to settle it by mediation.
- (a) The parties shall have recourse to mediation in accordance with the Mediation Rules, which are deemed to be incorporated by reference into this clause.
  - (b) If the Dispute is not settled by mediation within 30 days of the commencement of the mediation, or such further period as the parties shall agree in writing, the Dispute shall be submitted to the International Court of Arbitration of the ICC whose seat shall be London and shall be finally settled under the Arbitration Rules, by one or more arbitrators appointed in accordance with the Arbitration Rules. The Emergency Arbitrator Provisions under the Arbitration Rules shall not apply.
  - (c) This clause 27 takes the form of an arbitration agreement and is governed by the law of England

and Wales.

(d) The language to be used in the mediation and in the arbitration shall be English.

27.3 If the directors of the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them and the Customer is registered in the UK, the parties may commence court proceedings under clause 29 in relation to the whole or part of the Dispute.

## **28. GOVERNING LAW**

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 accordance with the law of England and Wales.

## **29. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).