

# Craig & Derricott Ltd General Terms and Conditions of Sale

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## **1 Definitions and Interpretation**

1.1 In these Conditions the following words have the following meanings:

**"Conditions"** means these terms and conditions of sale.

**"Business Day"** meaning a day, other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.

**"Company"** means [Craig & Derricott Limited (Registered No: 388918)] whose registered office is at [46 Hall Lane, Walsall Wood, Walsall, Birmingham WS9 9DP].

**"Company's Group"** means from time to time: any subsidiary of the Company, any company that is a majority shareholder (directly or indirectly) of the Company, and any subsidiary or company that is a majority shareholder (in each case direct or indirect) of such shareholder.

**"Contract"** means any contract, agreement or transaction between the Company and the Customer for the sale of Goods and/or provision of Services, incorporating and/or in accordance with these Conditions;

**"Contract Price"** shall have the meaning given to it in clause 7.1;

**"Customer"** means the person(s), firm or company who purchases the Goods and/or Services from the Company;

**"Goods"** means any goods and/or products and/or deliverables agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them);

**"Installation Services"** has the meaning given to it in clause 6.3;

**"Services"** means any Services agreed in the Contract to be provided to the Customer by the Company;

**"Force Majeure Event"** has the meaning given in clause 12;

**"Normal Business Hours"** means 9am-5pm on a Business Day;

**"Order"** means the Customer's order for the Goods and/or Services, as set out in the Customer's purchase order form, the Customer's written or verbal acceptance of the Company's quotation, the Customer's verbal order, or overleaf as the case may be;

**"Specification"** means any specification for the Goods and/or Services, including any related plans and drawings, which is agreed in writing by the Customer and the Company;

- 1.2 In these Conditions references to a gender include every gender, reference to persons include an individual, company, corporation, firm or partnership and reference to the singular include the plural and vice versa as the context admits or requires. Reference to a party includes its personal representatives, successors or permitted assigns.
- 1.3 Headings are for ease of reference only and shall not affect the construction of these Conditions.
- 1.4 A reference to "writing" or "written" includes faxes and emails.

## **2 Basis of Contract and Applicability**

- 2.1 Subject to any variation under clause 2.2 or any additional special terms and conditions incorporated in accordance with clause 2.3, the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any of the Company's previous terms and conditions, or any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification, or which are implied by trade/custom/practice or course of dealing, or other document whatsoever and whenever).
- 2.2 Any variation to these Conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing by a director of the Company. Any delivery terms provided by the Customer must be expressly agreed upon in writing to become effective.
- 2.3 If the Company has agreed to supply additional specific services that are governed by a bespoke set of special terms and conditions (such as tool hire), those terms shall be incorporated into the Contract in addition to these General Terms and Conditions provided that they are agreed in writing by a director of the Company. Should there be any conflict between these General Terms and Conditions and any special terms supplied in accordance with this clause 2.3, then the special terms shall only prevail in respect of the specific services (such as terms specific to tool hire) and otherwise the General Terms and Conditions shall prevail.
- 2.4 Each Order placed by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods and/or Services subject to these Conditions.
- 2.5 No Order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of the Order is issued by the Company or (if earlier):

- (a) the Company commences the manufacture of the Goods (if applicable);
  - (b) the Goods are assigned to the Customer's Order;
  - (c) the Goods are despatched to the Customer.
- 2.6 Any Order shall be accepted entirely at the discretion of the Company.
- 2.7 It is the Customer's obligation to ensure that the terms of its Order and any applicable Specification are both complete and accurate.
- 2.8 Any quotation or estimate made by the Company is given subject to these Conditions and does not constitute an offer. The Company reserves the right to withdraw or amend any quotation at any time. Without prejudice to the Company's right not to accept an Order, quotations will be valid for 30 days from date of issue unless withdrawn earlier or expressly stated otherwise in the quotation.
- 2.9 The Customer can only cancel an Order (or any part of an Order) which the Company has already accepted, with the Company's prior agreement in writing. The Customer may be charged a cancellation fee and if the cancellation is approaching the anticipated delivery date or delivery window, then the Customer may be charged the Contract Price in part or in full. The Company is not bound to agree to any such cancellation and may complete such Order even if the Customer purports to cancel it.
- 2.10 If the Customer requests to cancel an Order for non-standard or custom built Goods, a cancellation fee will apply and the Customer will be charged for part of or all of the remaining Contract Price depending on how near the cancellation is to the anticipated delivery date or delivery window.

### **3 Description of the Goods and Services**

- 3.1 The description of the Goods and/or Services shall be set out in the Company's acknowledgement of Order or, in its absence, the Company's quotation, in each case as modified by any applicable Specification.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions, details or illustrations contained in the Company's catalogues or online or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them and they will not form part of the Contract unless otherwise agreed in writing.

- 3.3 To the extent that the Company is to manufacture the Goods or supply the Services in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Company 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 professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification. This clause 3.3 shall survive termination of the Contract.
- 3.4 The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements or which do not materially affect the nature, quality or performance of the Goods and/or Services, and the Company shall notify the Customer in any such event.
- 3.5 To the extent that the Company is not manufacturing the Goods and the manufacturer amends the Specification if required by any applicable statutory or regulatory requirements to do so or in a way which does not materially affect the nature, quality or performance of the Goods, the Company shall notify the Customer if relevant, but shall still deliver the Goods.

#### **4 Delivery and Acceptance of Goods**

- 4.1 Unless otherwise agreed in writing by the Company or in the case of Goods being supplied with Installation Services, delivery of the Goods shall take place in Normal Business Hours at:
- (a) the Company's place of business; or
  - (b) the manufacturer's place of business where the Company is arranging their distribution direct to the Customer,
- and the Customer shall take delivery of the Goods within 7 days of the Company giving the Customer notice that the Goods are ready for delivery.
- 4.2 Notwithstanding clause 4.1, if the Company agrees in writing that the delivery of the Goods is to instead take place at the Customer's premises and is to be effected by either the Company or on behalf of the Company, the Customer will be responsible for the delivery charges (unless otherwise agreed in writing).
- 4.3 Delivery shall take place either at the time that the Goods are loaded in accordance with clause 4.1, or at the time of their unloading in accordance with clause 4.2.

- 4.4 Any dates specified by the Company for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence. If no dates are so specified, delivery will be within a reasonable time.
- 4.5 If for any reason the Customer does not accept delivery of any of the Goods when they are ready for delivery, or the carrier, the Company or its agent are unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then the Goods will be deemed to have been delivered, risk passing to the Customer (including for loss or damage caused by the Company's negligence) and the Company may:
- (a) store the Goods until actual delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance); or
  - (b) sell the Goods at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge the Customer for any shortfall below the Contract Price.
- 4.6 Unless agreed otherwise in writing, the Customer will provide at its expense at the place of delivery adequate and appropriate equipment and manual labour for loading or unloading the Goods.
- 4.7 Any pre-delivery agreed acceptance tests shall be conducted at the Company's premises, or at the premises of the manufacturer of the Goods (if that is not the Company), and at the Customer's expense, unless otherwise agreed in writing. If the parties have agreed there will be an acceptance test but have not specifically agreed on technical requirements and the manner of conducting the acceptance test, the acceptance test shall be conducted in accordance with industry practice of the relevant industry in the UK. The Company shall draw up a record of the acceptance test and shall provide said record to the Customer. The acceptance test shall be approved in the record. If the Customer has not raised legitimate objections in writing within 5 Business Days of a conducted acceptance test, the Customer shall be considered to have accepted the acceptance test. If the Goods are not in conformity with their description in accordance with clause 3.1, the Company shall urgently see to it that necessary corrections are carried out, provided the non-conformity is of significance for the use of the Goods. Thereafter, the Customer is entitled to a new acceptance test.
- 4.8 The Company shall be entitled at its discretion to make delivery of the Goods by instalments and to invoice the Customer for each instalment individually. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company 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 or to refuse to accept subsequent instalments.

4.9 The quantity of any consignment of Goods as recorded by the Company (or the manufacturer in accordance with clause 4.1(b)) prior to their delivery to the Customer shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

4.10 The Customer will be deemed to have accepted the Goods as being in accordance with the Contract unless:

- (a) within 72 hours of the date of delivery of the Goods, the Customer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Goods within 72 hours; or
- (b) the Customer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract within a reasonable time where the defect or failure would not be so apparent within 7 days of the date of delivery,

failing which the Customer shall not be entitled to reject the Goods and the Company 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.

4.11 Goods, once delivered, may not be returned unless their discretionary return is agreed in advance in writing by the Company, and subject to the following conditions:

- (a) Goods are returned in a new and unused condition and are no more than 12 months old from date of supply;
- (b) any packaging remains unbroken and in reasonable condition;
- (c) all transport and other re-delivery costs of whatever nature are paid by the Customer;
- (d) payment by the Customer to the Company of a restocking charge or such other charge as agreed in writing; and
- (e) returned Goods shall be accompanied by a written record of invoice number, date and a note of reasons for their return.

4.12 The Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if



caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract.

## **5 Passing of Risk and Legal Title**

5.1 Unless otherwise agreed in writing by the Company, the Goods shall be at the risk of the Customer from the time of:

- (a) delivery in the case of Goods being delivered in accordance with clause 4.1(a); or
- (b) their despatch to the Customer in the case of Goods being delivered in accordance with clause 4.1(b).

5.2 Full legal, beneficial and equitable title to and property in the Goods shall remain vested in the Company (even though they have been delivered and risk has passed to the Customer) until payment in full, in cash or cleared funds, has been received by the Company for:

- (a) all of the Goods; and
- (b) any other goods that the Company has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

5.3 Until full legal, beneficial and equitable title to and property in the Goods passes to the Customer:

- (a) the Customer shall hold the Goods on a fiduciary basis as the Company's bailee;
- (b) the Customer shall store the Goods at its premises in a proper manner in conditions which adequately protect and preserve the Goods and shall insure them, without any charge to the Company, and not tamper with any identification upon the Goods or their packaging and shall ensure that they are stored separately from any other goods (whether or not supplied by the Company) and are clearly identifiable as belonging to the Company and the Company shall be entitled to examine any such Goods in storage at any time during Normal Business Hours upon giving the Customer reasonable notice of its intention to do so;
- (c) the Company may at any time, on demand and without prior notice, require the Customer to deliver the Goods up to the Company and the Company may repossess and resell the Goods if any of the events specified in clause 13 occurs or if any sum due to the Company from the Customer under the Contract or on any other account or under any other contract is not paid when due;

- (d) for the purposes of this clause 5 the Company, its employees, agents and sub-contractors will be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Customer and/or any other location where any of the Goods are situated at any time without prior notice;
- (e) the Company shall be entitled to maintain an action against the Customer for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to the Customer; and

5.4 The Company's rights and remedies set out in this clause 5 are in addition to and shall not in any way prejudice, limit or restrict any of the Company's other rights or remedies under the Contract or in law or equity.

## **6 Provision of Services**

- 6.1 If providing Services, the Company shall do so in accordance with the description given at clause 3.1 in all material respects.
- 6.2 The Company shall use all reasonable endeavours to meet any performance dates for such Services as specified by the Company in its confirmation of the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 If the Services to be provided by the Company include installation of the Goods (**Installation Services**), it shall provide such services at the location set out in the Order or such other location as the parties may agree. Unless otherwise agreed in writing, any Installation Services shall be deemed to be complete when the Goods have been installed and:
- (a) where onsite tests are included in the Contract, such tests have been passed;
  - (b) one month after the installed Goods have been put to commercial use; or
  - (c) two months following written notice from the Company that the Goods have been successfully installed,
- whichever is sooner.
- 6.4 If onsite tests are included in the Contract and show that the installed Goods do not materially comply with the terms of the Contract, then the Company shall make good such defect or failure in accordance with the warranty given at clause 9.

## **7 Contract Price**

- 7.1 Unless otherwise agreed by the Company in writing and subject to clauses 7.3, 7.4 and 7.5, the contract price for the Goods and/or Services ("**Contract Price**") shall be the price set out in the Company's confirmation of Order, or in the absence of such, in its quotation, or in its current price list (either on the date of delivery or deemed delivery of the Goods or completion of the performance of the Services). Upon variations in exchange rates, customs, levies, taxes, excises, freight costs or other price elements outside of the control of the Company, exceeding 2% up to the time of invoicing of the Goods and/or Services, the Company may adjust the indicated prices. The Companies right to adjust the prices shall also apply when a certain price has been agreed upon by the parties.
- 7.2 Unless otherwise agreed in writing the price for the Goods and/or Services shall be exclusive of any value added tax or other similar taxes or levies and all costs, charges or expenses in relation to packaging, labelling, loading, unloading, carriage, freight and insurance, all of which amounts the Customer will pay, where appropriate, in addition when it is due to pay for the Goods and/or Services.
- 7.3 Should the Customer require the Goods and/or Services sooner than the usual timescales provided by the Company, the Company shall be entitled to add a surcharge to the Contract Price, which shall be confirmed to the Customer.
- 7.4 The Contract Price may be increased up to the time of invoicing to reflect any increase in the cost of the Goods and/or Services that is due to:
- (a) any delays caused by the Customer's provision of an inadequate, incomplete or incorrect Specification or instructions, or lack of thereof;
  - (b) any request by the Customer to change the Specification, delivery date(s), or the quantities or types of Goods and/or Services that were in the Order (including additional work not originally agreed to be part of the Contract);
  - (c) the courier, the Company or its agent having to deliver the Goods or perform the Services at unusual working hours at the Customer's request; or
  - (d) in the case of Services, any requirement for the Company's representatives to remain at the site of the Customer for longer than agreed.
- 7.5 The Company may, by giving notice to the Customer at any time up to seven Business Days before delivery, increase the Contract Price to reflect any increase in the cost of the Goods and/or Services that is due to any factor beyond the Company's control (including but not limited

to foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, other manufacturing costs, utility costs, courier costs or other supply chain costs).

## **8 Payment Terms**

- 8.1 The Customer will not be entitled to any deductions, discounts or rebates for prompt or early payment unless specifically agreed in writing by the Company. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company 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 Company to the Customer.
- 8.2 Unless specifically agreed by the Company in writing, payment of the Contract Price for the Goods and/or Services:
- (a) for pro-forma Customers is due before dispatch of the Goods or provision of the Services (where applicable); and
  - (b) for all other Customers (including account Customers) is due strictly 30 days net monthly after the earlier of delivery of Goods or provision of Services.
- 8.3 Time for payment shall be of the essence. The Customer shall under no circumstances, such as due to delays or deficiencies, be entitled to withhold or delay payment.
- 8.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.5 Notwithstanding any other provision, all payments payable to the Company under the Contract shall become due immediately upon termination of this Contract for whatever reason.
- 8.6 If payments received from the Customer are not stated to refer to a particular invoice, the Company may appropriate such payment to any outstanding invoice addressed to the Customer from the Company.
- 8.7 No indulgence granted by the Company to the Customer concerning the Customer's obligations under this Clause 8 shall be or be deemed to be a credit facility but if any such facility is granted to the Customer by the Company, the Company may withdraw it at its sole discretion at any time.

8.8 If any sum due from the Customer to the Company under the Contract or any other contract is not paid on or before the due date for payment then all sums then owing by the Customer to the Company shall become due and payable immediately and, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

- (a) cancel or suspend its performance of the Contract or any Order including suspending deliveries of the Goods and suspending delivery of any other goods to the Customer and suspending provision of the Services or other services until arrangements as to payment or credit have been established which are satisfactory to the Company;
- (b) appropriate any payment made by the Customer to such of the Goods or such of the Services (or any goods or services supplied under any other contract between the Customer and the Company) or as the Company may think fit;
- (c) require the Customer to pay for Goods prior to their despatch or collection from the Company's place of business;
- (d) suspend performance of Services remaining to be carried out; and
- (e) charge the Customer:
  - (i) interest calculated on a daily basis on all overdue amounts (both before and after judgment) until actual payment at the rate of eight per cent (8%) per annum above the UK base lending rate prevailing from time to time until payment is made in full; and
  - (ii) The cost of obtaining judgment or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.

## **9 Warranty of Quality of Goods and Services**

9.1 Subject to clause 9.3, the Company warrants that:

- (a) in the case of Goods other than rechargeable batteries, the Goods shall on delivery and for a period of 12 months from the date of delivery (or from the date of the completed installation in the case of Goods being supplied by the Company with Installation Services):
  - (i) conform in all material respects with their description and any applicable Specification;
  - (ii) be free from material defects in design, material and workmanship; and

- (iii) be of satisfactory quality in accordance with clause 9.9;
  - (b) in the case of the Goods being one or more rechargeable batteries, the warranty given at clause 9.1(a) shall be limited to 90 days from the delivery of the Goods; and
  - (c) in the case of any Services to be provided, such Services shall be provided with reasonable care and skill.
- 9.2 If the Customer establishes to the Company's reasonable satisfaction that the Goods or the Services do not comply with the warranty provided at clause 9.1 above, then the Company shall at its option, at its sole discretion and within a reasonable time;
- (a) repair or make good such defect or failure in such Goods free of charge to the Customer (including all costs of transportation of any Goods or materials to and from the Customer for that purpose);
  - (b) replace such Goods with Goods which are in all respects in accordance with the Contract or re-perform such Services; or
  - (c) issue a credit note to the Customer in respect of the whole or part of the Contract price of such Goods or Services as appropriate once it is in receipt of such Goods or any other materials relating to such Goods or Services,
- subject, in every case, to the remaining provisions of this clause 9 and provided that the liability of the Company under this clause 9 shall in no event exceed the Contract Price and performance of any one of the above options shall constitute an entire discharge of the Company's liability under this warranty.
- 9.3 The warranty given at clause 9.1 shall not apply unless the Customer:
- (a) notifies the Company in writing of the alleged defect within 7 days of the time when the Customer discovers or ought to have discovered the defect and in any event within 12 months of the delivery of the Goods (or of the completion of the Installation Services where applicable) or 3 months of performance of the Services to the Customer or such other periods as agreed by the Company in writing; and
  - (b) affords the Company a reasonable opportunity to inspect the relevant Goods or the location at which the Services were performed and, if so requested by the Company; and
  - (c) where it is reasonable to do so, promptly returns to the Company or such other person nominated by the Company a sample of the Goods or materials relating to the Services within 14 days, carriage paid by the Customer, for inspection, examination and testing

and/or otherwise permit the Company to have access to the Goods or such materials at the Customer's premises or other location where they may be or the Services were performed for such purposes.

- 9.4 If the Company elects to replace the Goods or re-perform the Services pursuant to Condition 9.1, the Company shall, at its own expense, deliver the replacement Goods to, or re-perform the Services for the Customer at, the original address of delivery or performance. For defective Goods, the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in the Customer) re-vest in the Company and the Customer shall make any arrangements as may be necessary to deliver to the Company the defective Goods which are being replaced or materials relating to the previously performed Services.
- 9.5 The Company shall have no liability under the warranty given at Condition 9.1 above:
- (a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;
  - (b) if the total price for the Goods and/or Services has not been paid by the due date for payment;
  - (c) for any Goods manufactured or appropriated to the Contract in accordance with any design, specification, instruction or recommendation made to the Company by the Customer, including the provision of inaccurate, ambiguous or incomplete information provided by the Customer, or for any Services provided in accordance with specifications, instructions or recommendation issued by the Customer;
  - (d) in respect of any type of defect, damage or wear specifically excluded by the Company by notice in writing; or
  - (e) if the Customer makes any further use of the Goods after giving notice in accordance with Clause 9.2.
- 9.6 The warranties set out in this document are the only warranties which shall be given by the Company and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.
- 9.8 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.



- 9.9 Goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the Goods, the price (if relevant) and other relevant circumstances to the Company's usual supply of such Goods.

## **10 Exclusion and Limitation of Liability**

- 10.1 Clauses 4, 9 and this clause 10, set out the entire liability of the Company (including any liability for the acts or omissions of its sub-contractors and any member of its Group) in respect of any breach of these Conditions or the Contract and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 Nothing in these Conditions shall exclude or limit the Company's liability for any liability which cannot legally be limited, including liability for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.
- 10.3 The Company shall not be liable for any economic loss of whatever nature (whether or not such loss or damage was foreseen, direct, foreseeable, known or otherwise), including loss of anticipated profits, loss of actual profits (direct or indirect), loss of anticipated savings, loss of business, or for any indirect, special or consequential loss or damage howsoever caused or any losses arising as a result of any third party bringing a claim in respect of any nature whatsoever.
- 10.4 Subject to clauses 10.1 - 10.3 above the total aggregate liability of the Company arising out of, or in connection with the performance or contemplated performance of this Contract whether for negligence or breach of contract or any case whatsoever shall in no event exceed 80% of the aggregate Contract Price paid or payable by the Customer for Goods and/or Services supplied in the calendar year preceding the date on which the liability first arose.
- 10.5 The Customer shall indemnify and hold harmless the Company for all liability exceeding the amount under clause 10.4.
- 10.6 The price of the Goods and/or Services has been calculated on the basis that the Company will exclude or limit its liability as set out in these Conditions and the Customer by placing an Order agrees and warrants that the Customer shall insure against or bear itself any loss for which the Company has excluded or limited its liability in these Conditions and the Company shall have no further liability to the Customer.

## **11 Subcontracting, Assignment and Third Party Rights**

- 11.1 The Customer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Company.



- 11.2 The Company may assign, charge, subcontract or transfer the Contract or any or all of its rights and obligations under this Contract to any person, including a member of the Company's Group.
- 11.3 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## **12 Force Majeure**

The Company reserves the right to defer the estimated date of delivery or to cancel the Contract or reduce the volume of the Goods or nature of the Services (where applicable) in the Order (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business and/or its obligations under the Contract due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, pandemic, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event of force majeure continues for a continuous period in excess of 3 months, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

## **13 Breach of Contract or Insolvency**

- 13.1 The Company may, as it thinks fit, (without prejudice to any other rights or remedies it may have against the Customer) immediately suspend further performance of the Contract or cancel any outstanding provision of the Services or delivery of the Goods or stop any Goods in transit or by notice in writing to the Customer terminate the Contract without liability to the Company if:
- (a) the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy;
  - (b) the Customer fails to remedy a breach of its obligations under the Contract (except as to payment) which is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been requested in writing by the Company to remedy or desist from such breach within a period of 14 days;
  - (c) the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation;
  - (d) any sum payable under the Contract is not paid within 30 days of its due date for payment in accordance with this Contract;

- (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), obtaining a moratorium, 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 party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (g) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13.2 Notwithstanding any such termination or suspension in accordance with clause 13.1 above:

- (a) the Customer shall pay the Company at the Contract rate for all Goods delivered or Services provided up to and including the date of suspension or termination;
- (b) and the termination of the Contract or any contract for whatever reason shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination;
- (c) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations under the Contract; and
- (d) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer's failure or delay to perform any of its obligations under the Contract.

13.3 Any provisions which are expressly stated to have effect after termination of this contract shall remain in force notwithstanding termination of this contract.

## **14 Notices**

14.1 All notices between the parties about this Contract must be in writing and delivered by hand, sent by pre-paid first class post, sent by facsimile transmission or acknowledged email:

- (a) (in case of notices to the Company) to its registered office or such other address as shall be notified to the Customer by the Company as shall be notified to the Customer by the Company in writing; or
- (b) (in the case of the notices to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Customer in writing.

14.2 Notices addressed to the Company shall be marked for the attention of the Managing Director or the Financial Controller.

## **15 Intellectual Property**

- 15.1 Except as expressly set out in this clause 15, no intellectual property rights of either party are transferred or licensed as a result of these Conditions. Any intellectual property rights (including, without limitation, patents, inventions, technical information, software, firmware, registered and unregistered designs, trademarks and service marks (registered or not) and copyright and any applications for them (**Intellectual Property Rights**) owned by or licensed by the Company, or created by the Company in the course of the performance of the Contract or otherwise in the manufacture of the Goods (where applicable) or the provision of the Services (where applicable) shall remain the Company's property (or licensed property).
- 15.2 The Customer is granted a fully paid-up, worldwide, non-exclusive, royalty-free licence to use any such Intellectual Property Rights for its use of the Goods.
- 15.3 If the Company requires the use of Intellectual Property belonging to or licensed by the Customer in relation to the manufacture of Goods or provision of the Services (in each case where applicable), the Customer hereby grants a non-exclusive, royalty-free licence (including the right to grant sub-licences to a member of the Company's Group or sub-contractors) to use such Intellectual Property for the purposes of, and to the extent necessary to, manufacture and/or supply the Goods and/or provide the Services.

## **16 General**

- 16.1 Nothing in the Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.
- 16.2 The rights and remedies of either party in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such party to the other nor by any failure of, or delay by the said party in ascertaining or exercising any such rights or remedies. The waiver by either party of any breach of the Contract shall not

prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

- 16.3 If at any time any one or more of the clauses within these Conditions (or any sub-clause or any part of one or more of the clauses within these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission.
- 16.4 The Contract sets out the entire agreement and understanding between the Customer and the Company in connection with the sale of the Goods (and the provision of the Services where applicable) and shall supersede and replace all documentation previously issued by the Company purporting to set out its terms and conditions of sale of the Goods and/or Services.
- 16.5 Each of the Company and the Customer shall keep confidential and shall not, without the prior written consent of the other, disclose to any third party or otherwise make public the terms or existence of the Contract or any other confidential or sensitive information of the other party. Neither party may, without the other party's approval, provide third parties with documents or otherwise disclose information of confidential character about the Contract or the other party, unless disclosure is necessary for the performance of the Contract, for the performance of further work for the Customer (in the case of the Company or a member of the Company's Group), or by law. The parties shall ensure they have non-disclosure agreements in place with their employees and any third parties to whom it is necessary to disclose confidential information and shall each take other appropriate measures to ensure that confidentiality is maintained. The confidentiality undertaking does not apply to information, which a party can demonstrate was duly brought to its notice other than by the Contract, or which is commonly known. The confidentiality undertaking shall remain in full force and effect after the termination of this Contract.
- 16.6 For sale of Goods outside of the UK, the Customer is responsible for obtaining, at its own cost, such import licences and other consents (and in some cases export and/or re-export licences) in relation to the Goods (or other product in which the purchased Goods are integrated) as are required from time to time and, if required by the Company, the Customer shall make those licences and consents available to the Company prior to the relevant shipment. Should such licenses not be obtained, or valid licenses revoked without the Company's negligence, the Company is relieved from its obligation to deliver the Goods and shall have no onward liability to the Customer other than to refund the Contract Price for such Goods if the Customer has prepaid for the Goods.

## **17 Law and Jurisdiction**

- 17.1 This Contract and any dispute or claim arising out of or in connection with it shall be governed by and be construed in all respects in accordance with English and Welsh law. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this Contract. The International Chamber of Commerce's (ICC) Incoterms® Rules shall apply but where they conflict with this Contract, this Contract shall prevail.
- 17.2 All disputes or claims arising out of or relating to this Contract shall be subject to the exclusive jurisdiction of the English and Welsh courts to which the parties irrevocably submit.