

## Philip Liverton Ltd Terms and Conditions

### 1. General

- 1.1. In these Conditions the following terms shall have the following meanings: "Buyer" the person who accepts a quotation given by the Seller for the supply of the Goods and/or Services or whose order for the Goods and/or services is accepted by the Seller; "Conditions" the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller; "Contract" means these Conditions, and the Buyer's Order as amended from time to time by the agreement in writing of the parties; "Goods" the Goods agreed to be supplied by the Seller in accordance with the Contract (as amended from time to time in writing by the Seller in accordance with these Conditions); "Intellectual Property Rights" all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including knowhow and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world; "Order" the Buyer's order for the supply of Goods and/or Services including but not limited to a verbal order which is confirmed in writing by the Seller, or the Buyer's acceptance of the Seller's quotation, or the Buyer's written acceptance of the Seller's quotation and/or any written specification and/or any special terms and conditions agreed in writing between the parties; "Quotation" means the definition as set out in condition 2.7 below; "Seller" means Philip Liverton Ltd (Company number 05768606); and "Services" means the services agreed to be supplied by the Seller in accordance with the Contract as amended from time to time in writing by the Seller.
- 1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.

### 2. Quotations and Orders

- 2.1. The Seller shall sell and the Buyer shall purchase the Goods and/or Services in accordance with any Quotation of the Seller which is accepted by the Buyer or any Order which is accepted by the Seller in writing, subject in either case to these Conditions which shall, subject to any variation in accordance with these Conditions, govern the Contract to the exclusion of any other terms and conditions provided that in the case of conflict between any term of these Conditions or a term of the Quotation and/or Contract, these Conditions shall have precedence.
- 2.2. In entering into the Contract the Buyer acknowledges that it does not rely on, and hereby waives any claim against the Seller for breach in relation to any representations made by the Seller which are not confirmed subsequently in writing.
- 2.3. Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.4. The Contract shall be formed upon the Buyer's acceptance of any written Quotation of the Seller, or upon any Order of the Buyer being acted upon by the Seller or accepted by

the Seller in writing.

- 2.5. The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.
- 2.6. Any samples, drawings, descriptive matter or advertising issued by the Seller and any descriptions of the Goods or illustrations or descriptions of the Services issued or published to set out those Services and/or Goods so described (whether in this Contract or elsewhere) shall not form part of the Contract or have any contractual force unless otherwise agreed in writing by the Seller.
- 2.8. No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller. Notwithstanding the Seller's agreement to the cancellation, the Buyer shall fully indemnify the Seller in the event of cancellation, in full against any or all losses (including consequential loss and loss of profit), costs (including the cost of all labour and materials used and including the cost of cancellation of any third party orders placed by the Seller in order to fulfil the contract, transportation and warehousing costs), damages, charges and expenses incurred by the Seller as a result of such cancellation.
- 2.7. A Quotation is an offer by the Seller conditional upon the Seller approving the Buyer's credit and therefore shall not be capable of forming a contract binding upon the Seller until such time as the credit worthiness of the Buyer has been
- 2.9. The Seller reserves the right to subcontract any Order or part of any Order without giving notice to the Buyer.
- 2.10. The Buyer may only request a change to an Order in writing, and for the avoidance of doubt the Seller is under no obligation to accept such change request. In the event that changes to an Order are agreed to by the Seller, such changes will be subject to charges for all costs occasioned by such change(s), and the Seller will be under no obligation to implement said changes unless and until the Buyer agrees to pay such additional costs in writing.
- 2.11. No Quotation is valid unless in writing.
- 2.12. To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Goods Specification. This condition shall survive termination of the Contract.
3. The Goods / Services
  - 3.1. The Seller shall not be liable if such Goods being a component part or parts are not suitable for use with other parts purchased by the Buyer from persons other than the Seller or if such parts do not together perform in the manner required by the Buyer, or if the Goods are not used and/or applied by the Buyer as directed by the Seller.

- 3.2. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) and for giving the Seller any necessary information relating to the Goods and/or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3. The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Order (to the extent accepted and/or amended by the Seller in accordance with the terms of condition 2.4 above).
- 3.4. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller or on behalf of the Seller in accordance with the Order, the Buyer shall fully indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for any infringement of any patent, copyright, design, trade mark or other intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.5. The Seller reserves the right to make any changes to the Order for the Goods and/or Services which are required to conform with any applicable safety or other statutory requirements or, where the Goods and/or Services are to be supplied to the Seller's specification which do not materially affect their quality or performance.
- 3.6. All drawings, designs, specifications and other information provided by the Seller are confidential and all rights of copyright ownership and other intellectual property rights in respect of them shall remain vested in the Seller and shall not pass to the Buyer.
4. Prices and Terms of Payment
  - 4.1. The price of the Goods and/or Services shall be the price(s) as set out in the Seller's Quotation and valid for 30 calendar days, subject to revision in writing thereafter. All prices quoted by the Seller shall be exclusive of the current rate of value added tax (which shall also be paid by the Buyer).
  - 4.2. The Seller reserves the right to: a) increase its fee rates for the charges for the Services; and b) increase the price of the Goods, by giving 7 calendar days' notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Seller that is due to: any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Order; or any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Seller adequate or accurate information or instructions in respect of the Goods.
  - 4.3. In respect of Goods, the Seller shall invoice the Buyer on or at any time after completion of delivery. In respect of Services, the Seller shall invoice the Buyer on completion of the Services or monthly, whichever is the soonest.
  - 4.4. The price of the Goods is exclusive of delivery, insurance and the costs associated with fitting or erecting the Goods supplied unless otherwise agreed in writing by the Seller.
  - 4.5. Payment must be made by the Buyer within 30 calendar days of the date of the Seller's invoice (unless otherwise agreed). Time for payment shall be of the essence of each

Contract.

- 4.6. The Seller shall be entitled to withhold supply of any further Services or, delivery of any further Goods (or any further delivery in the case of a delivery effected in instalments) in the event of the Buyer's non-payment in full in respect of the same. The Seller may, without limiting its other rights or remedies, set-off any amount owing to it by the Buyer (in respect of any outstanding account) against any amount payable by the Seller to the Buyer.
  - 4.7. In the event Goods and/or Services are made available to the Buyer in time for the agreed supply date, but the Buyer instructs the Seller in writing to delay actual supply, then the Seller will accept such instruction on the strict condition that the invoice of the Seller (or any portion of the invoice as specified by the Seller) shall become immediately due and payable by the Buyer, and that furthermore, the Seller will have the option to render a storage charge and be indemnified in respect of all and any associated costs in respect of any Goods which need to remain in the care of the Seller until the date of supply which in any event shall be no later than 3 calendar months. Thereafter the Contract shall be automatically terminated unless otherwise agreed in writing. The Buyer will remain liable to the Seller for all and any outstanding costs.
  - 4.8. The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part.
  - 4.9. The Seller shall have a lien on any property of the Buyer in his possession for any sum due to the Seller.
  - 4.10. In accordance with condition 113 of the Housing, Grants, Construction and Regeneration Act 1996, the Seller does not accept payment to it being conditional upon the Buyer receiving payment from a third party.
  - 4.11. Without limiting any other right or remedy of the Seller, if the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, the Seller shall have the right to charge interest on the overdue amount at the rate of 4% per annum above the then current base rate of the Bank of England, accruing on a daily basis from the due date of such payment until the date of actual payment of the overdue amount, whether before or after judgement, and compounding quarterly.
5. Delivery / Supply
- 5.1. Delivery of the Goods/Services shall be made in accordance with the terms of the Order within normal working hours. Delivery of the Goods may also be made by the Buyer collecting the Goods at the Seller's premises at any agreed time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
  - 5.2. Any dates quoted for delivery of the Goods and/or supply of the Services are approximate only and time for delivery of the Goods and/or supply of the Services shall not be of the essence. Goods and/or Services may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer. The date(s) for delivery shall only commence upon full and final information from the Buyer and the approval of the Seller's information in writing by the Buyer.

- 5.3. The Seller may deliver the Goods by instalments which shall be invoiced and paid for separately (unless otherwise agreed by the Seller). Each instalment shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the related series of Contracts as a whole as repudiated, or to cancel any other instalment.
- 5.4. If the Seller fails to deliver the Goods and/or supply the Services for any reason other than any cause beyond the Seller's reasonable control or an act or omission of the Buyer, the Seller's liability shall be limited to the excess (if any) of the reasonable cost to the Buyer (in the cheapest available market) of similar Goods and/or Services to replace those not supplied over the price of the Goods and/or Services.
- 5.5. If the Buyer fails to take delivery of the Goods after 3 calendar days or fails to give the Seller adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage.
- 5.6. The Seller shall use reasonable endeavours to meet the time for delivery of Goods and/or supply of Services but shall not be liable for delay caused by the following events:
  - 5.6.1 the Seller not having received from the Buyer (or if appropriate from any third party) in due time any necessary instructions, information, calculations, drawings, details and/or parts;
  - 5.6.2 the Seller's inability for reasons beyond his control to secure such Goods or materials or services as is essential to meet the requirements of the Buyer.
- 5.7. The Seller shall not be liable to the Buyer for delay in any event in the following circumstances:
  - 5.7.1. if the Buyer is entitled to any extension of time for completion of any works pursuant to any contract the Buyer has with a third party;
  - 5.7.2. if the Buyer would have been delayed in his performance of any other contract in any event due to the act or omission of any other person.
- 5.8. The Buyer shall not return any Goods to the Seller without the Seller's prior written authorisation. In any event any such return shall be made at the sole risk and expense of the Buyer. The Seller shall always be entitled to payment for these Goods in accordance with these Conditions.
- 5.9. In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 5.10. Where the Goods are supplied for export from the United Kingdom, the provision of conditions 5.9 to 5.13 shall (subject to any special terms agreed in writing between the

Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

- 5.11. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 5.12. Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered ex works (therefore not including package, loading, transport, delivery, unloading, insurance) and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 5.13. The Buyer shall be responsible for arranging inspection of the Goods at the Seller's premises if required before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would have been apparent on inspection and/or which is detected and/or made after shipment, or in respect of any damage occasioned during transit.
- 5.14. For the avoidance of doubt the Seller shall have no liability whatsoever on collection of the Goods by the Buyer or their servants or agents.
6. Risk and Property
  - 6.1. The risk in the Goods shall pass to the Buyer either:
    - 6.1.1. at the time when the Goods have been delivered to the Buyer in accordance with condition 5 above; or
    - 6.1.2. within 3 calendar days of the date of notification by the Seller to the Buyer that the Goods are ready for collection, whichever is the earlier.
  - 6.2. Prior to the Buyer collecting the Goods, the Seller may at his absolute discretion store the Goods anywhere at the Buyer's risk and expense.
  - 6.3. Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, title in the Goods shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds).
  - 6.4. Until such time as title in the Goods passes to the Buyer the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and stored in dry and clean conditions and insured and identified as the Seller's property.
  - 6.5. If Goods supplied by the Seller whether in their original state or mixed or processed or otherwise are sold by the Buyer prior to any payment of any monies due from the Buyer to the Seller the monies received by the Buyer shall be received by him in trust for the Seller to the extent of the Buyer's indebtedness to the Seller and shall without prejudice to any other claim or right of the Seller against the Buyer be paid over to the Seller forthwith upon receipt by the Buyer.
  - 6.6. Until such time as title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods

are stored and repossess the Goods.

7. Warranties

7.1. Every description or specification of the Goods and, if any, the Services, is given in good faith but all warranties, conditions and other terms implied by statute or common law as to the description of the Goods and/or Services or otherwise, are, to the fullest extent permitted by law excluded, and for the avoidance of doubt, the sale of the Goods and/or Services is not a sale by description.

7.2. The Seller warrants to the Buyer that, in respect of Goods manufactured by it, the Goods will conform with the Order at the time of delivery and will be free from material defects in design, material and workmanship for the period of 12 calendar months from the delivery date noted in the Order, irrespective of whether the Buyer takes delivery of the Goods and/or Services on the delivery date (provided such delay in taking delivery is not caused by an act or omission of the Seller as set out in condition 5.4 above).

7.3. The Seller warrants that the Services (if any) will be supplied with reasonable skill and care.

7.4. Save as set out above, any conditions or warranties (whether express or implied by statute, common law or arising from conduct or a previous course of dealing or trade, custom or usage) as to the quality or fitness of the Goods and/or Services for any particular purpose, even if that purpose is made known expressly or by implication to the Seller, are hereby expressly excluded.

7.5. Subject to condition 7.6, if the Buyer gives notice in writing within 1 calendar month of the date of delivery (as set out in the relevant Order), or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure (but in any event within 3 calendar months of the date of delivery as set out in the relevant Order), that some or all of the Goods (and/or Services as appropriate) do not comply with the warranties set out in condition 7.2 or 7.3, and:

7.5.1. the Seller is given a reasonable opportunity of examining such Goods and/or Services; and

7.5.2. the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost; then the Seller shall, at its option, repair or replace the defective Goods (or re-supply the Services, as the case may be) free of charge or at the Seller's sole discretion, refund to the Buyer the price of the Goods and/or Services (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

7.6. The Seller shall not be liable for the Goods' failure to comply with the warranty in condition 7.2, if:

7.6.1. the Buyer makes any further use of such Goods after giving a notice in accordance with condition 7.5; or

7.6.2. the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

7.6.3. the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer as part of the Order or otherwise; or

- 7.6.4. the Buyer alters or repairs such Goods without the written consent of the Seller; or
- 7.6.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 7.6.6. the Goods differ from the Order as a result of changes made to ensure they comply with applicable statutory or regulatory standards; then, except as provided in this condition 7, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in condition 7.2.
- 7.7. The terms of these Conditions shall apply in full to any repaired or replacement Goods supplied by the Seller.
- 8. Liabilities
  - 8.1. This condition sets out the entire financial liability of the Seller (including any liability for the acts or omissions of its respective employees, agents and sub-contractors) to the Buyer in respect of: a) any breach of these Conditions however arising; b) any use made by the Buyer of the Goods and/or Services or any part of them; and c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Conditions.
  - 8.2. Nothing in these Conditions shall limit or exclude the Seller's liability for death or personal injury resulting from negligence, or fraud or fraudulent misrepresentation.
  - 8.3. Notwithstanding anything to the contrary contained in these Conditions, the Seller's total liability arising under or in connection with these Conditions, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be capped at the value of current insurances held by the Seller or the cost of the Goods and/or Services received and/or due to be received by the Buyer under the relevant Order, whichever is lower.
  - 8.4. Subject to condition 8.1.1 the Seller shall not, under any circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
    - loss of profit; or
    - loss of goodwill; or
    - loss of business; or
    - loss of business opportunity; or
    - loss of anticipated saving; or
    - loss or corruption of data or information; or special, indirect or consequential damage or loss suffered by the Buyer that arises under or in connection with these Conditions.
  - 8.5. Any claim which the Buyer intends to make against the Seller shall be made within 3 calendar months of the date of supply of the Goods and/or the date of commencement of the Services. No claim made after the expiry of such period shall be valid.
  - 8.6. Subject to clause 8.3 and without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs, the liability of the Seller for any claim or claims under the terms and conditions shall be limited to such a sum as it would be just and equitable for the Seller to pay having regard to the extent of their responsibility for the loss or



damage giving rise to such claim or claims ("the loss and damage") and on the assumption that:

- a) All other consultants, contractors, sub-contractors, suppliers, project managers or advisers engaged in connection with the relevant project shall have provided contractual undertakings on terms no less onerous than those set out in the terms and conditions in respect of the carrying out of their obligations; and
- b) There are no exclusions of, or limitations of liability nor joint insurance nor co-insurance provisions between the Buyer and any other party referred to in this condition 8.8.5 and any such other party who is responsible to any extent for the loss and damage is contractually liable to the Buyer for the loss and damage; and
- c) All such other consultants, contractors, sub-contractors, suppliers, project managers or advisers have paid to the Buyer such a sum as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.

8.7. Further and notwithstanding anything to the contrary contained in the terms and conditions and without prejudice to any provision in the terms and conditions whereby liability is excluded or limited to a lesser amount, the liability of the Seller under or in connection with the terms and conditions whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim shall not exceed the amount, if any, recoverable by the Seller by way of indemnity against the claim in question under product liability Insurance taken out by the Seller.

## 9. Intellectual Property Rights

9.1. All designs drawings specifications and information supplied to the Buyer whether directly or indirectly are confidential.

9.2. All Intellectual Property Rights in or arising out of or in connection with the Good and/or Services shall be owned by the Seller.

9.3. The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods and/or Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Seller obtaining a written licence from the relevant licensor on such terms as will entitle the Seller to license such rights to the Buyer.

9.4. All designs, drawings, specifications, and information used and/or supplied to the Buyer in the course of the Contract remain the exclusive property of the Seller.

## 10. Termination

10.1. The Seller may terminate the Contract without liability to the Buyer by giving notice to the Buyer at any time if: the Buyer breaches any material term of this Contract and (if such breach is remediable) fails to remedy that breach within 14 calendar days after receipt of notice in writing of the breach; the Buyer makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes bankrupt or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or any similar or analogous event occurs in any jurisdiction; or the Seller reasonably apprehends that any of the foregoing events is about to occur in relation to the Buyer and notifies the Buyer in writing.

- 10.2. Without limiting its other rights or remedies, the Seller may terminate the Contract:
  - 10.2.1. by giving the Buyer 14 calendar days' written notice;
  - 10.2.2. with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 10.3. Without limiting its other rights or remedies, the Seller shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if:
  - 10.3.1. the Buyer fails to make pay any amount due under the Contract (or any other contract) on the due date for payment;or
  - 10.3.2. the Buyer becomes subject to any of the events listed under condition 10.1 or the Seller reasonably believes that the Buyer is about to become subject to any of them.
- 11. Consequences of Termination
  - 11.1. On termination of a Contract for any reason:
    - 11.1.1. The Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
    - 11.1.2. The accrued rights and remedies of the Seller as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
    - 11.1.3. conditions which expressly or by implication have effect after termination shall continue in full force and effect.
- 12. Disputes
  - 12.1. As a condition precedent to any dispute or difference being decided by the Courts, the Seller and Buyer agree to attempt amicable settlement by embarking upon an Alternative Dispute Resolution (ADR) procedure as agreed or recommended by the Centre for Dispute Resolution London.
  - 12.2. It is mutually agreed ADR can take place before Court proceedings or concurrently with Court proceedings.
- 13. General
  - 13.1. In the event that performance of any part of the Contract is affected by any unforeseen circumstances whatsoever or any cause beyond the Seller's reasonable control the Seller may delay suspend or terminate performance of the Contract or any part thereof. The Seller shall be under no liability whatsoever for any loss or damage arising in any way out of such delay suspension or termination of the Contract or any part thereof.
  - 13.2. No failure or delay by a party to exercise any right or remedy provided under these Conditions by law shall constitute a waiver of that or any other right or remedy, nor shall

it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 13.3. A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1998 to enforce any term of the Contract.
- 13.4. No variation to these terms and conditions shall be binding unless made in writing by an authorised signatory of the Seller.
- 13.5. Assignment and subcontracting:
  - 13.5.1. The Seller may at any time assign, novate, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
  - 13.5.2. The Buyer shall not, without the prior written consent of the Seller, assign, novate, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.6. Notices:
  - 13.6.1 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by email, prepaid post, special delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
  - 13.6.2. Any notice or other communication shall be deemed to have been duly received if delivered by email, personally, when left at such addressor, if sent by prepaid post or recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next business day after transmission.
14. Confidentiality
  - 14.1. A 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 or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
  - 14.2. The restrictions set out in condition 14.1 above do not apply to any use or disclosure authorised by the Disclosing Party or required by law; or any information which is already in, or comes into, the public domain otherwise than through the Receiving Party's unauthorised disclosure.
  - 14.3. This clause 14 shall survive termination of the Contract.

15. Governing Law

- 15.1. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.