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We draw your attention to the following standard conditions, some of which contain provisions defining and limiting our liability in respect of any potential default. The customer's attention is particularly drawn to the provisions of clause 14 (Limitation of liability). It is important that the customer reads and understands these limitations of liability as contained in these terms and conditions.

Are you a business customer or a consumer? In some areas you will have different rights under these terms and conditions depending on whether you are a business or consumer. You are a consumer if:

- a) you are an individual, and
- b) you are buying products from us wholly or mainly for your personal use (not for use in connection with your trade, business, craft or profession).

If you are not a consumer, you are a business customer. Nothing in these terms and conditions affects your legal rights as a consumer.

If you are a business customer these terms, your order (whether placed through the Supplier's Website (defined below) or on the telephone (or otherwise remotely) and in respect of any products purchased from the Supplier in store) and our acceptance constitute the entire agreement between us in relation to your purchase.

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Conditions: these terms and conditions as revised or amended from time to time in accordance with clause 2.1 and clause 18.8 respectively.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Deliverables: produced by the Supplier for the Customer.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: means any circumstance not within a party's reasonable control including, without limitation:

- a) acts of God, flood, storm, drought, earthquake or other natural disaster;

- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- f) collapse of buildings, breakdown of plant or machinery, fire, explosion or accident; and
- g) any labour or trade dispute, difficulty or increased expense in obtaining workers, materials or transport, strikes, industrial action or lockouts;
- h) non-performance by suppliers or subcontractors; and
- i) interruption or failure of utility service.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks 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.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

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

Service Specification: the description or specification for the Services, that is agreed in writing by the Customer and the Supplier.

Supplier: **FILTERMIST SYSTEMS LIMITED** registered in England and Wales with company number 04220347.

Supplier Materials: has the meaning given in clause 8.1(h).

Supplier's Website: <https://filtermist.co.uk>.

1.2 Interpretation:

- (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 and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. The Supplier may make revisions to these Conditions from time to time. If there are revisions, the Supplier will publish them on the Supplier's Website and highlight, on the home page, that revisions have been made. The Customer shall regularly check the Supplier's Website for details of any revisions having been published. Unless the Customer sends a notice in writing of objection to the Supplier within 21 days of any revision to these Conditions being published the revised Conditions shall be binding on the Customer. The Supplier's Website will identify the date on which the revisions will become effective and (unless the Customer has provided a notice of objection as detailed above) such revisions shall apply to all Orders which are issued on or after that date.
- 2.2 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance or confirmation of the Order having received full payment in cleared funds for the Goods which are the subject of the Order (unless credit terms have been agreed by the Supplier and confirmed in writing to the Customer) at which point the Contract shall come into existence provided always that if the Customer is a consumer the Order shall be deemed to be accepted when the Goods are delivered (the Supplier having received full payment in cleared funds).

- 2.4 The quantity and description of and any specification for the Goods shall be those set out in the Supplier's quotation (if accepted by the Customer) or the Order (if accepted by the Supplier).
- 2.5 A Customer who is dealing with the Supplier in the course of its business may not cancel an order which the Supplier has accepted except with the agreement in writing of the Supplier and any Customer cancelling any order hereby agrees to indemnify the Supplier in full against all losses (including loss of profits), costs (including the costs of all labour and materials used until the date of cancellation), damages, charges and expenses incurred by the Supplier as a result of the cancellation.
- 2.6 The Supplier may cancel an order at any time prior to delivery upon notice to the Customer whereupon a refund of any monies paid for the relevant goods will be promptly made.
- 2.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 2.8 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.9 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue (provided that the Supplier has not previously withdrawn it). Any quotation given by the Supplier will only be binding if given in writing on the Supplier's notepaper (by a duly authorised representative of the Supplier) and the quotation has not expired. A written quotation will be based on instructions given by the Customer. The Supplier reserves the right to amend any quotation given to reflect any incomplete inaccurate or changed instructions given by the Customer. Any verbal quotation is an estimate only and will not be binding unless and until confirmed by the Supplier in writing.
- 2.10 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

- 3.1 The Goods are described in any applicable Goods Specification.

- 3.2 The Customer shall be responsible to the Supplier for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Customer, and for giving the Supplier any necessary information relating to the Goods within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms
- 3.3 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.3 shall survive termination of the Contract.
- 3.4 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. Delivery of Goods

- 4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and special storage instructions (if any).
- 4.2 Delivery of the Goods shall be made by the Customer collecting the Goods at the Supplier's premises at Telford 54 Business Park, Nedge Hill, Telford TF3 3AL within seven days after the Supplier has notified the Customer in writing that the Goods are ready or, if some other place for delivery is agreed by the Supplier, the provisions of clause 4.8 shall apply in which case the Goods are at the Customer's risk from the time they are loaded on to the vehicle for despatch to the Customer whether that vehicle is the Supplier's, the Customer's or that of a chosen carrier and the Supplier will insure the Goods accordingly but at the cost of the Customer. If the Customer is a consumer, delivery shall take place immediately following payment received in clear funds pursuant to the provisions of clause 2.3.
- 4.3 The Goods may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the

Goods (or provision of the Services) that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or facilities for the delivery of the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to (i) take delivery of the Goods by way of collection from the Supplier's premises; or (ii) give instructions for delivery, within seven days after the Supplier has notified the Customer that the Goods are ready, then:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the seventh Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or give instructions for delivery of the Goods (as the case may be), the Supplier may:
- (a) treat the Contract as repudiated by the Customer's breach;
 - (b) resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods and the Customer will in any case be liable and compensate the Supplier as a result of the Customer's breach or the termination of the Contract.
- 4.8 If the Supplier agrees to arrange for the Goods to be transported to some place other than its own premises for delivery the following provisions shall apply:
- (a) the Supplier will make such arrangements for carriage and insurance of the Goods during carriage as it considers appropriate and the Supplier shall not be liable to the Customer in any way for the arrangements so made;
 - (b) the Customer warrants that the location for delivery is capable of allowing free and unhindered access, and if, in the event of delivery, any damage is done to

the location of delivery, the Customer shall be responsible for any claims for loss and expense or compensation, and shall indemnify the Supplier in the event that any claim is made against the Supplier in this regard;

- (c) the Customer must ensure that there are adequate facilities for unloading the Goods safely and promptly and within a reasonable time and that all approach roads and access points are suitable. If the Customer does not do so, the Customer shall reimburse the Supplier for any charges, costs or expenses incurred by the Supplier as a result;
- (d) the Customer shall indemnify the Supplier against any additional costs claims or proceedings arising out of any delay caused by lack of suitable access to or egress from the delivery premises, facilities for off-loading, signing-off of delivery notes or any other cause whatsoever arising from the Customer's or the Customer's agents' default or negligence;
- (e) the Supplier will not be responsible for off-loading the Goods at their destination and the Customer will be responsible for making any necessary arrangements for off-loading; and
- (f) the Goods shall be treated as having been delivered to the Customer as soon as the relevant vehicle transporting the Goods arrives at their chosen destination whereupon, for the avoidance of doubt, the unloading thereof, shall be the responsibility of the Customer.

4.9 The Supplier may deliver the Goods by instalments, which shall 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.

5. Quality of Goods

5.1 The Supplier acknowledges that the Goods supplied are for the purpose specified by the Customer who, having greater knowledge of its own requirements, relies entirely on its own skill judgement in evaluating the suitability of the Goods for its purpose.

5.2 The Supplier warrants that on delivery, the Goods shall conform in all material respects with and any applicable Goods Specification.

5.3 The warranty referred to in clause 5.2 (**Warranty**) is given by the Supplier subject to the following conditions:

- (a) the Supplier shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer.
- (b) the Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure

to follow the Supplier's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Supplier's approval.

- (c) the Supplier shall be under no liability under the Warranty (or any other warranty, condition or guarantee) if the Supplier has not received payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due;
- (d) the Warranty does not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier.

5.4 Subject to clause 5.5, the Supplier shall, at its option, repair or replace defective Goods, or refund the price of the defective Goods (or a proportionate part of the price of the defective Goods) whereupon the Supplier shall have no further liability to the Customer if:

- (a) the Customer gives notice in writing within a reasonable time of discovery (and in any event within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure) that some or all of the Goods do not comply with the Warranty;
- (b) the Supplier and its authorised representatives are given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost and the Customer shall be responsible for the safe custody of the Goods for a reasonable time pending their return to the Supplier.

5.5 The Supplier shall not be liable for the Goods' failure to comply with the Warranty if:

- (a) (unless otherwise agreed with the Supplier in writing) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.4;
- (b) the defect arises because the Customer failed to follow the Supplier'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;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer 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 working conditions; or

- (f) the Goods differ from their description or Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.6 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the Warranty set out in clause 5.2.
- 5.7 Any advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Supplier is followed or acted upon entirely at the Customer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
- 5.8 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Where the Goods are sold under a consumer transaction (as defined by the Sale of Goods Act 1979) the statutory rights of the Customer are not affected by these Conditions.
- 5.9 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.10 If delivery is not refused, and the Customer does not notify the Supplier accordingly, the Customer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect of failure, and the Customer shall be bound to pay the price for the Goods in accordance with these Conditions.

6. Title and risk

- 6.1 Risk of damage to or loss of the Goods shall pass to the Customer:
 - (a) in the case of Goods to be delivered at the Supplier's premises, at the time when the Supplier notifies the Customer that the Goods are ready for collection: or
 - (b) in the case of Goods to be delivered otherwise than at the Supplier's premises, the Goods are at the Customer's risk from the time they are loaded on to the vehicle for despatch to the Customer whether that vehicle is the Supplier's, the Customer's or that of a chosen carrierand the Supplier shall insure them against damage or loss accordingly but at the cost of the Customer.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods (or services) that the Supplier has supplied to the Customer in respect of which payment has become due or on any account whatsoever, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to 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 on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.2(a) to clause 15.2(c); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, 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 Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.2(a) to clause 15.2(c), then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell 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 that 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.

6.6 Where the Goods are mixed with or incorporated into other goods (**Product**) prior to their resale by the Customer:

- (a) although the property in the Goods has not then passed to the Customer the Supplier shall be entitled to the same proportion of the proceeds of sale of the Product as the proportion of the price payable under this Contract bears to the aggregate of the prices of the Goods comprised in the Product.
- (b) the Customer shall keep such records as shall enable the extent to which the Goods were so mixed or incorporated to be ascertained and on the sale of the Product the extent to which the Goods were mixed or incorporated and the amount of the proceeds of sale of the Product and the proportion which the Contract price of the Goods bears to the aggregate of the prices of the Goods comprised in the Product.

6.7 Where the Customer (but only in the ordinary course of his business) resell the Goods, the Customer as fiduciary shall account to the Supplier for the proceeds of sale (or so much of them as shall equal the total sums due to the Supplier) or otherwise of the Goods whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and, in the case of tangible proceeds, property stored, protected and insured.

7. Supply of Services

7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier reserves the right to amend the Service Specification if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. Customer's obligations

8.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Service Specification and the Goods Specification.

8.2 If the Supplier'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 (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and

- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. Charges and payment

9.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price shall be calculated by reference to the cost of materials, labour and other overheads. Where the Goods are supplied for export from the United Kingdom, the Supplier's export price list shall apply; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

9.2 The charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in its current price list at the date of the Contract;
- (b) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- (c) the Supplier shall be entitled to charge an overtime rate of 100% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and
- (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.3 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

- (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

- (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.4 Except as otherwise stated under the terms of these Conditions or any quotation or in any price list of the Supplier, and unless otherwise agreed in writing between the Customer and the Supplier, all prices are given by the Supplier on an ex-works basis, and where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Customer shall be liable to pay the Supplier's charges for transport, packaging and insurance.

9.5 Subject to any special terms agreed in writing between the Customer and the Supplier In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery unless the Goods are to be collected by the Customer or the Customer fails to take delivery of the Goods, in which event the Supplier shall be entitled to invoice the Customer for the price at any time after the Supplier has notified the Customer that the Goods are ready pursuant to clause 4.2 and the Supplier shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. In respect of Services, the Supplier shall invoice the Customer on completion of the Services.

9.6 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days from month end of the date of the Supplier's invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) in sterling (unless otherwise agreed) in full and in cleared funds (less any discount agreed by the Supplier, but without any other deduction) to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, 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 supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.8 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:

- (a) cancel the Contract or suspend any further deliveries of (i) Goods (or goods to be supplied under any other contract between the Customer and the Supplier) to the Customer; and/or (ii) provision of Services (or services to be supplied under any other contract between the Customer and the Supplier) to the Customer; and
- (b) appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract (whether for goods or services) between the Customer and the Supplier) as the Supplier may deem fit (notwithstanding any purported appropriation by the Customer).

9.9 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 15 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest), but at 4% a year for any period when that base rate is below 0%.

9.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9.11 In respect of sales to an overseas Customer payment of the full amount of the price and additional and overseas shipping and transportation charges, insurance, carriage, storage or standing costs or any costs or expenses whatsoever must be paid prior to the despatch of the Goods in accordance with the provisions of clause 11.6.

9.12 If the Supplier has to commence and prosecute legal proceedings in order to recover outstanding sums due from the Customer, the Customer agrees to indemnify the Supplier and pay on demand the legal costs and expenses incurred by the Customer in commencing and prosecuting legal proceedings, on a full indemnity basis.

10. Intellectual property rights

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

10.2 The Supplier grants to 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 the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

- 10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.
- 10.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

11. Export Terms

- 11.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Customer and the Supplier) apply notwithstanding any other provision of these Conditions.
- 11.2 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 and Incoterms and these Conditions, the latter shall prevail.
- 11.3 The Customer 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.
- 11.4 Unless otherwise agreed in writing between the Customer and the Supplier, the Goods shall be supplied FCA and the Supplier shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 11.5 The Supplier shall have no liability for any claim in respect of any damage during transit.
- 11.6 Payment of all amounts due to the Supplier shall be made by irrevocable letter of credit opened by the Customer in favour of the Supplier and confirmed by a bank in the United Kingdom acceptable to the Supplier or, if the Supplier has agreed in writing on or before acceptance of the Customer's order to waive this requirement, by acceptance by the Customer and delivery to the Supplier of a bill of exchange drawn on the Customer payable 60 days after sight to the order of the Supplier at such branch of the Bank in England as may be specified in the bill of exchange.

12. Bribery and Anti-Corruption

- 12.1 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
- (d) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement;

12.2 The Customer shall:

- (a) comply with all Relevant Requirements;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) promptly report to the Supplier any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of this agreement.

12.3 The Customer shall ensure that any person associated with the Customer who is buying Goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Customer in this clause 12 (**Relevant Terms**). The Customer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Supplier for any breach by such persons of any of the Relevant Terms.

12.4 For the purpose of this clause 12, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 12 a person associated with the Customer includes but is not limited to any subcontractor of the Customer.

13. Confidentiality

- 13.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

14. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 14.1 The restrictions on liability in this clause 14 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 14.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - (d) defective products under the Consumer Protection Act 1987.
- 14.4 Subject to clause 14.3, the Supplier's total liability to the Customer shall not exceed the total of all sums paid by the Customer and all sums payable under the Contract in respect

of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer.

- 14.5 This clause 14.5 sets out specific heads of excluded loss and exceptions from them:
- (a) Subject to clause 14.3, the types of loss listed in clause 14.5(b) are wholly excluded by the parties.
 - (b) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) indirect or consequential loss.
- 14.6 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, 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.
- 14.7 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of any claim made against the Supplier in respect of damage to property, death or personal injury arising from any fault or defect in the materials or workmanship of the Goods and, if applicable, the Product.
- 14.8 The terms of the Contract do not and will not affect the statutory rights of the Customer as a consumer.
- 14.9 This clause 14 shall survive termination of the Contract.
- 15. Termination**
- 15.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract by giving the Customer not less than one month's written notice.

- 15.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party 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;
 - (b) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (c) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 15.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - (b) there is a change of Control of the Customer.
- 15.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.2(a) to clause 15.2(c), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

16. Consequences of termination

- 16.1 On termination of the Contract:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their

safe keeping and will not use them for any purpose not connected with this Contract.

- 16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.
- 16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

17. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for four weeks, the Supplier may whether or not delivery has been postponed or partial deliveries made terminate the Contract forthwith by giving written notice to the Customer.

18. General

18.1 Assignment and other dealings

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

18.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or as otherwise specified by one party to the other (in any other case); or

- (i) sent by email to the address specified in the Order or as otherwise specified by one party to the other.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 18.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A party may change its details for service of notices as specified in this clause 18 by giving notice to the other party, the change taking effect for the party notified of the change at 9.00 am on the later of:
 - (i) the date, if any, specified in the notice as the effective date for the change; and
 - (ii) the date five Business Days after deemed receipt of the notice.

18.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 18.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

18.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 18.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 18.6 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
 - (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 18.7 **Third party rights.** 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.
- 18.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 18.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 18.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.