



The Aluminium Diecasting Specialists

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JVM Castings (Tamworth & Worcester) Ltd - General Terms and Conditions of Purchase.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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

Commencement Date: has the meaning set out in clause 2.3.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 15.6.

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

Customer: JVM Castings (Tamworth) Ltd (registered in England and Wales with company number 2677869). JVM Castings (Worcester) Ltd (registered in England and Wales with company number 5816200). JVM Castings Ltd (registered in England and Wales with company number 02677990).

Customer's Health and Safety Manager: such person or persons who are nominated by the Customer and whose details are made known by the Customer to the Supplier from time to time.

Customer Materials: all castings, fixings, materials, dies, patterns, moulds, and all other equipment together with tools, drawings, Specifications, and data supplied by the Customer to the Supplier together with all and any items manufactured by the Supplier at the expense of the Customer, whether in whole or in part (and any replacements thereof).

Deliverables: all documents, products, and materials (including castings) developed by the Supplier or its agents, contractors, and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications, and reports (including drafts).

Equipment: any and all items of the Customer's machinery, tooling, and other equipment in respect of which Services are to be performed.

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

Goods Specification: any specification for the Goods, including (but not limited to) any descriptions and/or specifications set out within the Order, and any related plans and drawings, that is agreed in writing by the Customer (acting by a director of the Customer) and the Supplier.

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Intellectual Property Rights: all designs, patents, rights to inventions, utility models, copyright and related rights, trademarks, 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, rights in confidential information (including know-how 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 Customer's order for the Goods and Services (if any), as set out in the Customer's purchase order form overleaf. A reference to an order shall also include a reference to a "Purchasing Agreement" and any other document which is used to order Goods and/or Services and which is issued by the Customer.

Services: The Services (or any part of them) to be provided to the Customer as set out or referred to in the Order, including without limitation any Deliverables.

Service Specification: the description or specification for Services, including (but not limited to) any descriptions and/or specifications set out within the Order, and any related plans and drawings, that is agreed in writing by the Customer (acting by a director of the Customer) and the Supplier.

Specifications: Goods Specification and/or Service Specification, as the case may be.

Supplier: the person or firm from whom the Customer purchases the Goods and/or the Services as specified in the Order

1.2 **Construction.** In these Conditions, unless the context requires otherwise, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Customer may make revisions to these Conditions from time to time. If there are revisions, the Customer will publish them on the home page at www.jvmcastings.com and highlight, on that home page, that revisions have been made. The Supplier shall regularly check the home page for details of any revisions having been published. Unless the Supplier sends a notice in writing of objection to the Customer within 21 days of any revision to these Conditions being published the revised Conditions shall be binding on the Supplier. The home page will identify the date on which the revisions will become effective and (unless the Supplier has provided a notice of objection as detailed above) such revisions shall apply to all Orders which are issued on or after that date. Revisions to these Conditions that are made after the Commencement Date are binding on the Customer and the Supplier and become effective to all Orders issued on or after the effective date as specified on the home page referred to above. If the Supplier objects to any revision or update to these Conditions in accordance, then any Orders issued to the Supplier after the effective date on which the revisions are to take effect will continue to be subject to the previous un-amended Conditions whilst the Customer makes alternative arrangements for supply.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or the Services in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted on the earlier of:
- (a) the Supplier issuing a written acceptance of the Order; and
 - (b) the Supplier doing any act consistent with fulfilling the Order.
 - (c) the Supplier's delivery of either a stage or full invoice, the terms of which are acceptable to the Customer,
- at which point the Contract shall come into existence (13th December 2013).
- 2.4 In the event of an Order having been placed, the Supplier shall within 5 Business Days of a written request (or requests) by the Customer issued to the Supplier, submit a timing plan showing key dates against which the progress of the Supplier's performance in fulfilling the Contract can be measured. Whilst the Customer and the Supplier shall have negotiated such key dates in any antecedent negotiations prior to the Order, the provisions of this clause shall supersede any timing plan or agreement as to such key dates such that the Customer is at liberty to issue a further written request requiring the submission of a timing plan within the period referred to in this 2.4.

If in the opinion of the Customer, any timing plan submitted by the Supplier is not acceptable to the Customer (having regard to its commitments and contractual liabilities to third parties) then the Customer and the Supplier shall negotiate to agree a revised timing plan provided

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this is always without prejudice to the Customer's right to forthwith terminate the Contract at no cost to the Customer and the Supplier shall have no remedy against the Customer pursuant to the provisions of clause 12 or otherwise.

- 2.5 Where an Order is placed for the production and delivery of large batch volume Goods, the Customer will issue a schedule to the Supplier, the terms of which (relating to key dates, quantities, and specified delivery arrangements) will be deemed, upon acceptance of the Order, incorporated into the Contract.
- 2.6 The Supplier shall upon pre-agreed dates or upon request from the Customer to the Supplier during the continuance of the Contract, issue to the Customer both an updated timing plan and status report. Each status report will identify the Goods, state the percentage of completion of the Order, and state the percentage of [sunk costs] already expended.
- 2.7 Notwithstanding the provisions of clause 15.4, the Customer may make changes to its order for the Goods at any time. These may include changes to the design, specifications, engineering level, materials, packaging, shipping date, or time or place of delivery. The Supplier will make all changes requested by the Customer. The Supplier may not make any change on its own without first obtaining the Customer's consent in writing signed by a director of the Customer. The Customer will provide the Supplier with notice of any change through an amendment or revision to the outstanding Order, the issuance of a new Order or a notice in writing. If the amendment is accomplished by issuing a new Order, the dates for delivery of Goods and/or performance of Services of the original Order will apply. If the proposed change will materially affect cost or timing the Supplier will promptly notify the Customer in writing and provide substantiation of its claim (to the reasonable satisfaction of the Customer). In accordance with clause 2.8, the Customer shall have the right to audit details of any claim made. In the event of such notification and substantiation (and, at the Customer's sole option, following satisfactory audit of the claim) and where the Customer has confirmed that it still wishes to proceed with the change the Customer shall then implement an equitable price adjustment (up or down), a change in shipping or delivery terms, or other appropriate adjustment.
- 2.8 If requested by the Customer, the Supplier will permit the Customer to:
- (a) examine all pertinent documents, data and other information relating to the Goods, and the Supplier's obligations under the Contract, any payment made to the Supplier or any claim made by the Supplier. Without prejudice to the foregoing, the Supplier shall provide the Customer with copies of such documents, data, and information upon the Customer's request; and
 - (b) view any facility or process relating to the Goods or the Order, including those relating to production quality.

3. THE GOODS

- 3.1 The Supplier shall ensure that the Goods shall:
- (a) correspond with their description and any applicable Specification.
 - (b) notwithstanding clause 3.1(a), in addition conform to any applicable Customer's predetermined or industry standards made known to the Supplier.
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement.
 - (d) where applicable, be free from defects in design, material and workmanship and remain so for 12 months after Delivery; and
 - (e) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling, and delivery of the Goods. 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.3 The Supplier shall, prior to delivery to the Customer, undertake an inspection and test of the Goods to ensure full and complete conformance with the provisions of clause 3.1 and the Supplier shall, if requested by the Customer, give the Customer reasonable notice (of not less than 3 Business Days) of such inspection or test who shall be entitled to be represented thereat by a person so nominated by the Customer. The Supplier shall upon request deliver to the Customer any components, two dimensional or three-dimensional designs and models together with a copy of any report prepared by the Supplier during the inspection or testing process and shall confirm to the Customer the same are true and accurate in all respects.
- 3.4 The Customer shall have the right to inspect and test the Goods at any time before delivery, at the Supplier's premises or otherwise and the Supplier hereby grants to the Customer a licence to enter at any such premises where the Goods are situated.
- 3.5 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

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3.6 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

3.7 Further, the Supplier shall mark or label the Goods as the property of the Customer.

4. DELIVERY & TRANSPORTATION OF GOODS

4.1 The Supplier shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note (addressed "**GOODS INWARDS**" and marked for the attention of "The Goods Manager" or such other person as is notified by the Customer to the Supplier) which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), a detailed bill of materials, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
- (b) where applicable the Goods are delivered on a flatbed articulated transport vehicle (having regard to the provisions of clause 4.1(a)) in order to enable the Customer to remove the Goods using overhead crane and forklift equipment at its premises.
- (c) in the event of large or heavy weighted Goods, the Supplier shall give the Customer reasonable notice in writing (of not less than 5 Business Days) to arrange and agree the method and time for unloading such Goods.
- (d) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- (e) all Goods are delivered in line with the relevant provisions of clauses 4.7, 4.8 and 4.9 (depending upon the mode of transportation of the Goods) and that the Goods are not delivered to the Customer in a damaged state. Without prejudice to the remaining provisions of the Contract (including but not limited to the provisions of clause 6), the Customer reserves the right to either:
 - (i) reject delivery of the Goods and recover from the Supplier any and all costs associated with such rejection by the Customer, which shall include but not be limited to costs of return carriage and storage costs pending return to, or collection by, the Supplier; or
 - (ii) accept delivery of the Goods and recover from the Supplier any and all costs incurred by the Customer in ensuring the Goods comply with the Goods Specification

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(if any), or in ensuring the Goods are of satisfactory quality (as referred to in clause 3.1 (c)).

- (f) without prejudice to the remaining provisions of the Contract (including but not limited to the provisions of clause 6 and clause 10) all Goods delivered to the Customer are fully insured for the full replacement value of the Goods and that the Supplier is fully insured for all costs which could be incurred by the Customer (as a result of the Supplier's failure to deliver the Goods or provide the Services for any reason whatsoever on or before the date for delivery specified in the Order):
 - (i) in making alternative emergency working arrangements (including but not limited to overtime costs and costs of replacement of any and all items) required to satisfy the Customer's commitments and obligations to any third party; and
 - (ii) as a result of the Customer's failure to supply goods and services to any third party arising out of any such non-delivery for any reason whatsoever by the Supplier.
- (g) all Goods being shipped from outside the UK are as a minimum requirement insured DDU (Delivery and Duty Unpaid). The Supplier acknowledges that (without prejudice to the provisions of clause 10) the Customer will be at liberty to request that the Supplier effect (at its sole cost) all such insurances as are required by the Customer from time to time during the continuance of the Contract.
- (h) it uses the services of a shipping agent whose details appear on a list of preferred shipping agents, details of which shall be furnished to the Supplier by the Customer upon request if not already made known to the Supplier.
- (i) all items used in the performance of the Contract are of metric standards and comply with the latest UK, European and international standard as laid down by the relevant governing bodies pertaining to the industry in which the Customer and the Supplier both operate; and
- (j) all required certificates of conformity (as specified in the Order) are supplied to the Customer with the Goods upon delivery

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order (or on the date or dates specified by the Supplier (and agreed by the Customer) in any timing plan(s) requested pursuant to the provisions of clause 2.4), or, if no such date is specified, within 28 days of the date of the Order provided that, if no such date is specified, the Supplier shall have given not less than 5 Business Days' notice in writing to the Customer. The Supplier acknowledges and agrees that any date for delivery may be a day which is not a Business Day.

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- (b) to the Customer's premises or such other location as is set out in the Order, or as instructed by the Customer prior to delivery (**Delivery Location**); and
 - (c) during the Customer's normal business hours, or as instructed by the Customer.
- 4.3 [Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.]
- 4.4 [The Customer shall have the right in its absolute discretion to refuse to accept Goods delivered in advance of the date specified in the Order or as otherwise agreed.]
- 4.5 [If the Supplier:
- (a) delivers less than 95% of the quantity of Goods ordered, the Customer may reject the Goods; or
 - (b) delivers more than 105% of the quantity of Goods ordered, the Customer may at its discretion reject the Goods or the excess Goods,
- and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.]
- 4.6 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 6.
- 4.7 Where Goods are shipped via sea from outside the UK, Supplier shall ensure that:
- (a) the Goods are properly packed (including but not limited to ensuring that Goods are properly packed in seaworthy packing where applicable) and secured in such manner as to enable them to reach their destination in good condition.
 - (b) all Goods:
 - (i) are as a minimum requirement insured DDU (Delivery and Duty Unpaid). The Supplier acknowledges that (without prejudice to the provisions of clause 10) the Customer will be at liberty to request that the Supplier effect (at its sole cost) all such insurances as are required by the Customer from time to time during the continuance of the Contract.
 - (ii) are loaded into a current plated standard shipping container.

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- (iii) where possible are transported via a shipping agent whose details appear on a list of preferred shipping agents, details of which shall be furnished to the Supplier by the Customer upon request if not already made known to the Supplier.
 - (c) if the Customer's preferred agents are not available to use, the Customer is copied in on all correspondence with regard to the shipment of the Goods, so that:
 - (i) all associated documentation i.e., bill of lading, invoice and packing list are sent to the Customer's preferred shipping agents in advance of the shipment of Goods reaching a UK port.
 - (ii) the Customer's preferred agent can carry out all customs clearance and pay all duty and tax due on the shipment of Goods.
 - (d) the Goods once cleared through UK customs are returned to the Suppliers shipping agent by the Customer's preferred shipping agent so that the final stage of the transportation of the Goods can be completed.
 - (e) the Goods are removed from the container, unpacked, and loaded onto transport as specified in clause 5 provided always that if the Goods cannot be (for whatever reason) be removed and unpacked at the port whereby the Customer cannot receive the Goods, the Supplier shall transport the container to the Customer's preferred shipping agent in order for the Goods to be removed and unpacked and then delivered to the Customer by the preferred shipping agent. If this is the case, then the Customer needs to be informed as the payment of extra costs will need to be agreed.
- 4.8 For all Goods shipped via road either inside or outside the UK the Supplier shall ensure that:
- (a) all Goods must be completely covered and packed with a suitable weatherproof covering as to prevent the Goods being weather damaged or damaged in transit. If weather damage occurs the Supplier will be solely responsible for the repair or replacement costs and any costs incurred in connection with the Goods not being delivered to the Customer on the agreed date for delivery.
 - (b) the provisions of clause 4.7 (a) to (e) are fully complied with.
 - (c) the Goods are loaded on to a suitable vehicle, stowed, secured, and transported in compliance with all relevant legislation including but not limited to health and safety and road haulage legislation.
- 4.9 For all goods shipped via air freight from outside the UK the Supplier shall ensure that:
- (a) all Goods shall be suitably packed in order to prevent the Goods being weather damaged or damage in transit. If damage occurs the Supplier will be solely responsible for

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the repair or replacement costs and any costs incurred in connection with the Goods not being delivered to the Customer on the agreed date for delivery.

- (b) all Goods are packed and secured in line with the air freight company's requirements.
- (c) the Goods are split and divided into packages based on weight and size as per the air freight company's specification for the efficient loading onto, storage, and removal from the aircraft.
- (d) all Goods are flown via the most direct route to the nearest airport nearest to the Customer which can handle the weight and size of the Goods.
- (e) the provisions of clause 4.7 (a) to (e) are fully complied with.

- 4.10 If, once the Goods have been delivered to the Customer, it transpires that such Goods have, when utilised by the Customer, resulted in a the Customer having to discard or scrap more than 3% of the batch number of items in respect of any Order then the Customer shall be at liberty to reject the entire batch of Goods and the Supplier shall indemnify and keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect and including loss of anticipated profits or any consequential loss), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with such failure to produce and deliver Goods to the required Goods Specification.

5. SUPPLY OF SERVICES

- 5.1 The Supplier shall from the Commencement Date, or the date set out in the Order and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.
- 5.3 In providing the Services, the Supplier shall:
- (a) co-operate with the Customer in all matters relating to the Services and comply with all instructions of the Customer.
 - (b) perform the Services with the best care, skill, and diligence in accordance with best practice in the Supplier's industry, profession, or trade.
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract.
 - (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be

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fit for any purpose expressly or impliedly made known to the Supplier by the Customer.

- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services.
- (f) ensure that its employees, agents and permitted subcontractors who must in the course of provision of the Services use any of the Customer's equipment, receive all requisite training (in accordance with best practice in the Supplier's industry, profession or trade) in the use of the equipment concerned and the Supplier shall provide to the Customer's Health and Safety Manager evidence of competence for each such employee, agent and permitted subcontractor prior to use of the equipment concerned. If evidence is not so provided or the Customer considers the evidence inadequate or incomplete then the Supplier's employees, agents and permitted subcontractors as the case may be shall (and the Supplier shall procure that the employees, agents and permitted subcontractors as the case may be shall):
 - (i) not use the equipment concerned.
 - (ii) stop work until all required training (in accordance with best practice in the Supplier's industry, profession, or trade) in the use of the equipment concerned has been undertaken and evidence of competence in respect thereof has been provided to and approved by the Customer's Health and Safety Manager in charge of such matters; and
 - (iii) make request of the Customer's Health and Safety Manager that a Customer employee (who shall be competent in such matters) operate the equipment for the Supplier's employees, agents and permitted subcontractors as the case may be; [and
 - (iv) ensure that the Supplier's personnel or subcontractor/s is supervised at all times by a trained and competent JVM employee;]
- (g) use the best quality goods, materials, standards, and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation, and design.
- (h) obtain and at all times maintain all necessary licences and consents, insurances, and certifications (required in accordance with best practice in the Supplier's industry, profession, or trade) and comply with all applicable laws and regulations.
- (i) observe all health and safety rules, certifications and regulations and any other security requirements that apply at any of the Customer's premises (including but not limited to the obligation to wear personal protection equipment.

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- (j) provide to the Customer's Health and Safety Manager, prior to commencement of work at any site being premises of the Customer or any third party, a method statement of work, and the Supplier acknowledges that failure to do so will (or may) result in all or any parties not being allowed on site; or all and any parties being asked to leave site whereupon the Supplier shall indemnify and keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect and including loss of anticipated profits or any consequential loss), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with such failure;
- (k) obtain, prior to commencement of work at any site being premises of the Customer or any third party, and at all times comply with, a valid permit to work issued by the Customer (subject to the Supplier having provided evidence to the Customer that the Supplier carries full comprehensive public liability insurance for itself and third parties (whether they be employees of the Supplier, the Customer or any third party), to provide cover for the Supplier's activities and presence on any site or premises whatsoever during the performance of the Contract), and the Supplier acknowledges that failure to comply with this clause will (or may) result in all or any parties not being allowed on or to remain on site; or all and any parties being asked to leave site whereupon the Supplier shall indemnify the Customer and keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect and including loss of anticipated profits or any consequential loss), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with such failure;
- (l) hold all Customer Materials in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation.
- (m) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent, or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and
- (n) remove all packaging and materials used on site during fulfilment of the Order and restore any relevant working area and any equipment operated or worked upon by the Supplier's employees, agents or permitted subcontractors back to full operation to the satisfaction of the Customer.

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- 5.4 The Supplier acknowledges that (notwithstanding the generality of the foregoing provisions of this clause 5) failure to comply with any of the foregoing provisions of this clause 5 will entitle the Customer in its absolute discretion to request that the Supplier (and its employees, agents etc) be directed to leave any site or premises where the Contract is being performed whereupon the Supplier shall indemnify the Customer and keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect and including loss of anticipated profits or any consequential loss), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with such failure or failures.
- 5.5 The acts and/or omissions of an employee, agent or permitted sub-contractor of the Supplier shall be the sole responsibility of the Supplier whilst on the Customer's or third-party premises (whether or not performing the Services or delivering Goods as the case may be) and the Supplier shall indemnify the Customer and keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect and including loss of anticipated profits or any consequential loss), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with such acts and/or omissions.
- 5.6 Where the Services to be supplied include the provision of maintenance, decommissioning and upgrading of Equipment, the following provisions of this clause 5 shall, in addition to all other Conditions (where applicable), apply.
- 5.7 The Customer shall make available the Equipment to the Supplier for collection by the Supplier at the Customer's premises at Borman, Lichfield Road Industrial Estate, Tamworth, Staffordshire, B797TA and or Droitwich Road Worcester WR3 7JX or such other location as is set out in the Order, or as instructed by the Customer prior to delivery at subject to the terms and conditions of this Order.
- 5.8 The Supplier shall not, other than in the exercise of its rights under the Order or applicable law, interfere with the Customer's quiet possession of the Equipment. Without prejudice to any other provisions of these Conditions, Equipment is in the possession or control of the Supplier as a bailment from the Customer. The Supplier acknowledges that it is a bailee-at-will of the Equipment at all times.
- 5.9 Delivery of the Equipment (to the Supplier for the purposes of providing the Services) shall be made by the Customer at the Customer's premises at Borman, Lichfield Road Industrial Estate, Tamworth, Staffordshire, B797TA and or Droitwich Road Worcester WR3 7JX or such other location as is set out in the Order, or as instructed by the Customer prior to delivery. The Customer shall use all reasonable endeavours to effect Delivery by the date and time agreed between the Customer and the Supplier. Risk shall transfer in accordance with clause 7.

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- 5.10 The Supplier shall procure that a duly authorised representative of the Supplier shall be present at the Delivery of the Equipment. If required by the Customer, the Supplier's duly authorised representative shall sign a receipt confirming acceptance of the Equipment.
- 5.11 To facilitate Delivery, the Customer shall provide all requisite materials, facilities, access, and suitable working conditions to enable Delivery to be carried out safely and expeditiously.
- 5.12 Prior to Delivery a full itemised inventory (together with photographic records) ("Inventory") of all Equipment being collected shall be taken, agreed upon and signed by both the Customer and the Supplier.
- 5.13 The Supplier shall ensure that the Equipment is transported in line with the relevant provisions of clauses 4.7, 4.8 and 4.9 (depending upon the mode of transportation of the Goods) and that the Goods are not delivered to the Customer in a damaged state.
- 5.14 Upon completion of the Services, the Supplier shall (at its expense) return the Equipment (as listed in the Inventory) to the Customer (ensuring that the Equipment is covered with a suitable weather proof covering as to ensure the Equipment is not delivered to the Customer in a weather damaged state) at the Customer's premises at Borman, Lichfield Road Industrial Estate, Tamworth, Staffordshire, B797TA and or Droitwich Road Worcester WR3 7JX or such other location as is set out in the Order, or as instructed by the Customer prior to delivery. The Supplier shall use all best endeavours to effect delivery of the Equipment ("Return Delivery") by the date and time agreed between the Customer and the Supplier in this respect time shall be of the essence. The Supplier shall procure that a duly authorised representative of the Supplier shall be present at the Return Delivery of the Equipment. If any items of Equipment as listed in the Inventory are not delivered to the Customer, the Supplier shall indemnify the Customer and keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect and including loss of anticipated profits or any consequential loss), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with such failure or failures to deliver. Risk shall revert to the Customer upon acceptance by the Customer of the Equipment which has been delivered to the Customer which shall be evidenced by the Customer's duly authorised representative signing a receipt confirming acceptance of the Equipment which has been so delivered.
- 5.15 The Supplier acknowledges that upon failure to comply with any of the foregoing provisions of this clause 5 (including but not limited to effect the Return Delivery) the Supplier shall indemnify the Customer and keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect and including loss of anticipated profits or any consequential loss), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with such failure or failures.

6. REMEDIES

6.1 If the Supplier fails to:

- (a) deliver the Goods on the date they are due as referred to in clause 4.2(a), or does not comply with the undertakings set out in clause 3.1; and/or
- (b) perform the Services on the date they are due as referred to in clause 5.1 or does not comply with the undertakings set out in clause 5.3.

then, without limiting any of its other rights or remedies (including but not limited to the provisions of clause 6.2), the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:

- (i) to terminate the Contract.
- (ii) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense.
- (iii) to require the Supplier to rework, repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid).
- (iv) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make.
- (v) where the Customer has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier.
- (vi) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make.
- (vii) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and
- (viii) to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

6.2 Notwithstanding the provisions of clause 4.1 (g) and clause 6.1, the Customer shall, in the event that the Goods are not delivered on the date they are due as referred to in clause 4.2(a), or do not comply with the undertakings set out in clause 3.1 (or in the case of Services not being provided on the date they are due to be performed as referred to out in clause 5.1 or the Seller not complying with the undertakings set out in clause 5.3), be at liberty to employ a sub-contractor to obtain substitute goods and/or services (as the case may be) the

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cost of which incurred by the Customer shall be for the sole account of the Supplier on an indemnity basis and who shall indemnify the Customer on such basis on written **demand and for the avoidance of doubt** the Supplier shall keep the Customer indemnified in full against all costs, expenses, damages, and losses (whether direct or indirect and including loss of anticipated profits or any consequential loss), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:

- (a) the Customer making alternative emergency working arrangements (including but not limited to overtime costs and costs of replacement of any and all items) required to satisfy the Customer's commitments and obligations to any third party; and
- (b) as a result of the Customer's failure to supply goods and services to any third party arising out of any such non-delivery for any reason whatsoever by the Supplier.

6.3 These Conditions shall apply to any substituted or remedial services and/or repaired or replacement Goods supplied by the Supplier.

6.4 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages, and losses (whether direct or indirect and including loss of anticipated profits or any consequential loss), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:

- (a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents, or subcontractors.
- (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents, or subcontractors; and
- (c) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents, or subcontractors.

This clause 6.4 shall survive termination of the Contract.

6.5 If the Customer exercises any right of rejection (in part or in whole) or termination of the Contract, the Supplier shall forthwith repay to the Customer any and all sums paid to the Supplier on account of the Original Price (as such term is defined in clause 8.1) or part thereof, as the case may be.

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6.6 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

7. TITLE AND RISK

7.1 Title and risk in the Goods shall (without prejudice to any right of rejection available to the Customer under these Conditions or any other remedies whatsoever available to the Customer at law) pass to the Customer on completion of delivery. The Customer becomes the sole owner of all Goods as soon as they are fabricated or acquired by the Supplier. The Customer takes title to the Goods even if the Supplier has not yet been paid for the Goods. Ownership by the Customer will not relieve the Customer of its obligation to pay for the Goods nor affect any claim of the Supplier for payment under an Order. Without prejudice to any other provisions of these Conditions, Customer Materials are in the possession or control of the Supplier as a bailment from the Customer. The Supplier acknowledges that it is a bailee-at-will of the Goods as soon as they are fabricated and Customers Materials at all times.

7.2 Equipment shall at all times remain the property of the Customer, and the Supplier shall have no right, title, or interest in or to the Equipment (save the right to possession and perform the Services upon the Equipment).

7.3 The risk of loss, theft, damage, or destruction of the Equipment shall pass to the Supplier on Delivery. The Equipment shall remain at the sole risk of the Supplier during the Period and any further term during which the Equipment is in the possession, custody, or control of the Supplier ("Risk Period") until such time as the Equipment is redelivered to the Customer. During the Period and the Risk Period, the Supplier shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Customer may from time to time nominate in writing.
- (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Customer may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
- (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Customer may from time to time consider reasonably necessary and advise to the Supplier.

7.4 All insurance policies procured by the Supplier shall be endorsed to provide the Customer with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Customer's

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request name the Customer on the policies as a loss payee in relation to any claim relating to the Equipment. The Supplier shall be responsible for paying any deductibles due on any claims under such insurance policies.

- 7.5 The Supplier shall give immediate written notice to the Customer in the event of any loss, accident or damage to the Equipment or arising out of or in connection with the Supplier's possession or use of the Equipment in performance of the Services.
- 7.6 If the Supplier fails to effect or maintain any of the insurances required under this agreement, the Customer shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Supplier.
- 7.7 The Supplier shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Customer and proof of premium payment to the Customer to confirm the insurance arrangements. 7.8 The Supplier shall during the term of this agreement:
- (a) ensure that the Equipment is kept, stored, and operated in a suitable environment and perform the Services in a proper manner by trained competent staff in accordance with any operating instructions provided by the Customer.
 - (b) take such steps (including compliance with all safety and usage instructions provided by the Customer) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned, or maintained by a person at work.
 - (c) shall make good any damage to the Equipment.
 - (d) keep the Customer fully informed of all material matters relating to the Equipment.
 - (e) at all times keep the Equipment in the possession or control of the Supplier and keep the Customer informed of its location.
 - (f) permit the Customer or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located and shall grant reasonable access and facilities for such inspection.
 - (g) maintain maintenance records of the Equipment and make copies of such records readily available to the Customer, together with such additional information as the Customer may reasonably require.
 - (h) not, without the prior written consent of the Customer, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it.

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- (i) not without the prior written consent of the Customer, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Supplier shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Customer against all losses, costs or expenses incurred as a result of such affixation or removal.
- (j) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Customer in the Equipment and, where the Equipment has become affixed to any land or building, the Supplier must take all necessary steps to ensure that the Customer may enter such land or building and recover the Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Customer of any rights such person may have or acquire in the Equipment and a right for the Customer to enter onto such land or building to remove the Equipment;
- (k) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Supplier shall notify the Customer and the Supplier shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Customer on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (l) not use the Equipment for any unlawful purpose.
- (m) ensure that at all times the Equipment remains identifiable as being the Customer's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment.
- (n) deliver up the Equipment at the end of the Period or on earlier termination of this agreement at such address as the Customer requires, or if necessary, allow the Customer or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and
- (o) not do or permit to be done anything which could invalidate the insurances referred to in Condition 7.3.

7.9 The Supplier acknowledges that the Customer shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Supplier or its officers, employees, agents and contractors, and the Supplier undertakes to indemnify the Customer on demand

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against the same, and against all losses, liabilities, claims, damages, costs, or expenses of whatever nature otherwise arising out of or in connection with any failure by the Supplier to comply with the terms of the Order.

8. PRICE AND PAYMENT

- 8.1 The price of the Goods (and Services as applicable) shall be the price set out in the Order (the Original Price). The Original Price may only be varied with the consent of the Customer if signed by a director thereof.
- 8.2 The price of the Goods (and delivery of the Services) is exclusive of amounts in respect of value added tax (VAT), but includes the costs of inspection and testing, packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by a director of the Customer.
- 8.3 The Customer shall, on receipt of a valid VAT invoice from the Supplier and approved by the Customer, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or the provision of the Services.
- 8.4 The Supplier may invoice the Customer for the Goods and/or the Services:
- (a) in line with payment terms as agreed between the Customer and the Supplier, specified in the Order; or
 - (b) on or at any time after the completion of delivery (or as the case may be the provision of the Services) and not before.
- 8.5 Invoices submitted otherwise than accordance with clause 8.4 shall be returned to the Supplier and shall not be payable in accordance with the provisions of clause 8.3.
- 8.6 Unless otherwise stated on the Order, the Customer shall pay correctly rendered invoices prior to the end of two full calendar months following the month of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. For the avoidance of doubt the Customer shall be at liberty to refuse payment to the Supplier in the event that any invoice submitted by the Supplier is incorrect.
- 8.7 If a party fails to make any payment due to the other under the Contract by the due date for payment (**due date**), then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above The Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.

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8.8 The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

8.9 In the event that any modification to the design of the Goods or provision of the Services is notified in writing to the Supplier in accordance with the provisions of clause 15.6 and such modification results in an increased cost of production of the Goods or provision of the Services to the Supplier then (provided that the Supplier can justify and substantiate an increase in such cost to the reasonable satisfaction of the Customer) the Supplier may with the Customer's consent (such consent not be unreasonably withheld or delayed) increase the Original Price by an amount equal to such increased cost.

9. CUSTOMER PROPERTY

9.1 The Supplier acknowledges that all Customer Materials, and all rights (including but not limited to Intellectual Property Rights) in the Customer Materials are and shall remain the exclusive property of the Customer. The Supplier will be supplied with relevant part/tooling/die numbers or codes which are delivered to the Supplier for the purpose of completing the Order and shall at all times maintain a record of such numbers or codes. The Supplier shall keep the Customer Materials (including any and all records of numbers or codes hereinbefore referred to) in safe custody at its own risk (insuring the same with a reputable insurer), maintain them in good condition until returned to the Customer (either upon completion of the Order or at any time when requested by the Customer to do so) at the sole cost of the Supplier, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation. Further, the Supplier shall mark or label the Customer Materials the property of the Customer.

9.2 In the event that the Supplier fails to return the Customer Materials, the Customer shall, without prejudice to any other rights or remedies the Customer may have, be entitled without notice to withhold any payments which are or may become due to the Supplier by the Customer whether under the terms of the Contract or otherwise.

9.3 Save with the consent of the Customer (and without prejudice to the provisions of clause 14.1(b)), the Supplier shall not use the Customer Materials, nor shall the Supplier authorise nor permit them to be used by any third party for or in connection with any purpose other than the supply of the Goods and/or the provision of the Services to the Customer.

9.4 The Supplier shall indemnify and kept the Customer indemnified against all and any loss or damage to the Customer Materials howsoever arising (including without limitation the negligence of the Supplier) whilst the Customer Materials are in the possession, custody, and control of the Supplier until such time as they are delivered to the Customer pursuant to the provisions of clause 9.1.



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- 9.5 The Supplier shall be permitted to enter upon the Customer's premises (the Premises) for the sole purpose and as may be reasonably necessary for the purpose of supplying the Goods and Services.
- 9.6 The Supplier shall comply with all reasonable standards of safety and comply with the Customer's health and safety, and standard operating procedures from time to time in force at the Premises and shall be obliged to report to the Customer any unsafe working conditions or practices. Further, the Supplier shall be liable for all acts or omissions of its employees when entering upon the Premises and shall indemnify the Customer in the event that the Customer suffers any claim by any third party arising as a consequence of the Supplier to fulfil its obligations hereunder, howsoever arising.

10. INSURANCE

During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11. CONFIDENTIAL INFORMATION

- 11.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how (including but not limited to plans, drawings, advertising materials, or any other written material in whatever format, including the Customer Materials), Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents, or subcontractors shall keep such information confidential. The Supplier shall upon request (whenever made) by the Customer return all such confidential information and materials to the Customer as directed in writing.
- 11.2 The Supplier undertakes to the Customer that it will not, directly, or indirectly at any time during the continuance of the Contract and for a period of 12 months from the conclusion of the Contract, solicit or entice away from the Customer any person who is or was during the continuance of the Contract, an employee of the Customer save that this clause shall not apply to any employee employed by the Customer in a nonmanagerial or purely administrative role.

12. TERMINATION

12.1 The Customer may terminate the Contract in whole or in part at any time before Delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

12.2 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:

- (a) the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Supplier is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier.
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier.
- (d) (being an individual) the Supplier is the subject of a bankruptcy petition or order.
- (e) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days.
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier.
- (g) (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver.

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- (h) a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets.
 - (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2(a) to clause 12.2(h) inclusive.
 - (j) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business.
 - (k) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (l) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 12.3 In addition to the preceding provisions of this clause 12, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier breaches the provision of clause 15.1 (b).
- 12.4 Upon termination of this agreement, however caused:
- (a) the Customer's consent to the Supplier's possession of the Equipment shall terminate and the Customer may, by its authorised representatives, without notice and at the Supplier's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; and
 - (b) without prejudice to any other rights or remedies of the Supplier, the Supplier shall pay to the Customer on demand any costs and expenses incurred by the Customer in recovering the Equipment and/or in collecting any sums due under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs).
- 12.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

13. FORCE MAJEURE

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or

circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 5 Business Days, the Customer may terminate this Contract immediately by giving written notice to the Supplier.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer. Further, the Supplier warrants that the use of the Goods by the Customer and/or the sale of the Goods by the Customer to any third party shall not infringe the Intellectual Property Rights of any person, firm or individual.
- 14.2 The Supplier assigns to the Customer, with full title guarantee and free from all third-party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 14.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 14.4 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 14.2.
- 14.5 In the event of any breach of any warranty contained within this clause 14 or implied at law, the Customer may at its option and notwithstanding the Goods may have been accepted by the Customer:
- (a) reject the Goods.
 - (b) require the Supplier at its own expense to make such modifications to the Goods as are necessary to bring the breach of warranty to an end; or
 - (c) require the Supplier to replace the Goods with goods that comply with the warranty set out within clause 14.1.
- 14.6 The Supplier shall indemnify and keep indemnified the Customer from any damage suffered by the Customer howsoever caused (whether or not direct or indirect and whether foreseeable or not) as a result of any such breach of warranty set out within clause 14.1.

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14.7 The Customer may have valuable Intellectual Property Rights in Customer Materials including Goods which are produced to the Goods Specification, documents and information provided to the Supplier. The Supplier may use the Intellectual Property Rights of the Customer only in the production and supply of the Goods to the Customer. Any and all Intellectual Property Rights in Goods shall vest solely in the Customer and the Supplier shall undertake all such acts as required to transfer such Intellectual Property Rights to the Customer.

14.8 This clause 14 shall survive termination of the Contract.

15. GENERAL

15.1 Assignment and subcontracting.

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

15.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier, fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a); if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; 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, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.3 Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal, or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

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- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable, and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid, and enforceable.
- 15.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it 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.
- 15.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 15.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by a director of the Customer. The Customer reserves the right to require modification to the design or composition of the Goods or the nature of the Services to be performed and such modification shall upon receipt of notice in writing by the Supplier be deemed to be incorporated into the Order, and subject to these Conditions.
- 15.7 **Governing law and jurisdiction.** 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.