



TERMS AND CONDITIONS OF SALE

This Agreement is made between Mechan Limited a company registered in England and Wales with company number 00947728 whose registered office is at Building Number 5, Davy Industrial Park, Prince Of Wales Road, Sheffield, England S9 4EX (**Company**) and the firm or company named as the customer in the purchase order (**Customer**).

1. DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Acceptance:	the acceptance of the purchase order appearing overleaf signed by the Customer.
Business Day:	a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.
Commencement Date:	the date of the Contract appearing in the purchase order.
Company's Premises	Building Number 5, Davy Industrial Park, Prince Of Wales Road, Sheffield, England S9 4EX or any other premises occupied by the Company in connection with its business.
Contract:	the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these Terms.
Delivery:	completion of delivery of the Goods in accordance with clause 3.4.
Delivery Address:	the address specified for the Delivery in the purchase order (if not collected from the Company's Premises).
Estimated Delivery Date:	the estimated delivery date specified in the purchase order, as for the Delivery of Goods in accordance with clause 3.
Goods:	the goods (and each of them) set out in the purchase order.
Price:	the price for the Goods and/or Services appearing in the purchase order (together with any applicable VAT,

transport and delivery costs) in accordance with clause 7.

Services: the services set out in the purchase order.

Specification: any agreed specification or performance requirements of the Goods and/or Services brief particulars of which appear in or are referred to in the purchase order.

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

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 Words in the singular shall include the plural and vice versa.

1.5 A reference to one gender shall include a reference to the other genders.

1.6 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of this agreement and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of this agreement.

1.7 A reference to writing or written includes e-mail.

1.8 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

2. BASIS OF CONTRACT

These are the Terms on which the Company will supply the Goods and/or Services to the Customer, which are described in the purchase order. These Terms are binding on the Customer and the Company when the Customer signs the Acceptance, at which point the Contract will come into existence between the Customer and the Company.

3. SUPPLY OF THE GOODS

- 3.1 The Company shall supply and the Customer shall purchase the Goods at the Price in accordance with the Terms of this agreement.
- 3.2 The Goods supplied to the Customer by the Company under this agreement shall:
- 3.2.1 conform to the Specification;
 - 3.2.2 be free from defects in design, material and workmanship and remain so for a minimum of 12 months from the date of Delivery of the Goods, or 15 months from notification of readiness to deliver, whichever is the sooner in accordance with clause 12.1; and
 - 3.2.3 comply with all applicable statutory and regulatory requirements.
- 3.3 Except as set out in this agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.
- 3.4 The Company shall deliver the Goods to the Customer as follows:
- 3.4.1 at the Company's Premises at any time after the Company has notified the Customer that the Goods are ready for collection by the Customer or its designated carrier or agent;
 - 3.4.2 if some other place for Delivery is agreed as the Delivery Address, by the Company delivering the Goods to such address;
 - 3.4.3 upon the placing of the Goods in storage facilities either at the request of the Customer or due to its failure or refusal to accept Delivery; or
 - 3.4.4 upon consignment of the Goods by the Company to the Post Office at the request of the Customer for Delivery in the normal course of post.
- 3.5 Non-delivery of the Goods shall be notified to the Company within 7 days of the date of dispatch as indicated by the Company.
- 3.6 The Company and (where relevant) the carriers must be notified within 3 days of the date of Delivery of any damage or shortage and the Customer must retain for inspection any damaged Goods and packaging.
- 3.7 The Company may deliver the Goods by instalments. Each instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

3.8 The Goods may be delivered by the Company in advance of any specified date of Delivery upon giving reasonable notice to the Customer.

3.9 Delays in the Delivery of the Goods shall not entitle the Customer to:

3.9.1 refuse to take Delivery of the Goods;

3.9.2 claim damages; or

3.9.3 terminate this agreement.

For the avoidance of doubt, it is agreed that time for Delivery shall not be of the essence unless it has been stated to be so in the purchase order. Whilst the Company will use reasonable endeavours to deliver the Goods, there may be delays due to a Force Majeure Event. See clause 14 for the Company's responsibilities when a Force Majeure Event happens.

3.10 If Delivery is to take place at the Company's Premises and the Customer fails to take Delivery of the Goods within five Business Days of the Company notifying the Customer that the Goods are ready for collection then, except where such failure or delay is caused by the Company's failure to comply with its obligations under this agreement:

3.10.1 Delivery of the Goods shall be deemed to have been completed at 9.00am on the fifth Business Day following the day on which the Company notified the Customer that the Goods were ready for collection; and

3.10.2 the Company shall store the Goods until Delivery takes place, and may charge the Customer for all related costs and expenses (including insurance).

3.11 If the Customer shall fail to take Delivery of the Goods within 28 days of notification that they are ready for Delivery the Customer shall forfeit any deposit paid to the Company and the Company shall have the right to:

3.11.1 sell, dispose of or otherwise deal with the Goods and the Customer shall be liable to the Company for all loss (including loss of profits) or damage which the Company shall suffer in consequence of the Customer's failure to take Delivery of the Goods or of such sale; and

3.11.2 account to the Customer for any excess over any such liability.

4. TITLE AND RISK

Title and risk in the Goods shall pass to the Customer from the time of Delivery.

5. DESIGN AND SPECIFICATION

- 5.1 Any drawings, weights, dimensions, shipping specifications and other descriptive matters are approximate unless specified otherwise in the purchase order.
- 5.2 The Company shall have the right to make any changes to the Specification which is necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods and/or Services, and the Company shall notify the Customer in any such event.

6. SERVICES

- 6.1 The Company shall supply the Services to the Customer in accordance with the purchase order in all material respects.
- 6.2 The Company shall undertake the Services using reasonable care and skill, as soon as reasonably practicable. Any dates proposed are estimated only. Whilst the Company will make every effort to complete the Services as quickly as reasonably possible, there may be delays due to a Force Majeure Event. See clause 14 for the Company's responsibilities when a Force Majeure Event happens.
- 6.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.

7. PRICE AND PAYMENT

The Customer shall pay the Company the Price of the Goods and/or Services specified in the purchase order at agreed stages as specified in the purchase order, or within 30 days of the invoice date (**Payment Deadline**). If the Customer fails to make such payment by the Payment Deadline, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. The time for payment of the Price of the Goods and/or Services under the Contract shall be of the essence of the Contract.

8. THE COMPANY'S RIGHTS TO CANCEL AND APPLICABLE REFUND

The Company may cancel the Contract for Goods and/or Services at any time by giving the Customer 30 day's written notice if the Customer breaks the Contract in any material way.

9. THE CUSTOMER'S RIGHTS TO CANCEL AND APPLICABLE REFUND

- 9.1 The Customer has the following rights to cancel the Contract for Goods and/or Services, including where the Customer chooses to cancel because the Company is affected by a Force Majeure Event, the Customer may cancel this Contract at any time before the Company dispatches the Goods or the start date for the Services.
- 9.2 If the Customer so cancels this Contract, the Company will refund any prepayment for Services that have not been provided to the Customer, or Goods that have not been delivered to the Customer (including delivery charges).
- 9.3 However, if the Customer cancels this Contract after the Company has started work, the Customer must pay to the Company any costs reasonably incurred in starting to fulfil the Contract, and this charge will be deducted from any refund that is due to the Customer or, if no refund is due to the Customer, invoiced to the Customer. These charges will not apply where the Customer cancels this Contract because of the Company's breach.
- 9.4 Once the Company has begun to supply the Goods and/or Services to the Customer, the Customer may only cancel the Contract by giving the Company written notice if:
- 9.4.1 the Company breaks this Contract in any material way;
 - 9.4.2 the Company goes into liquidation or a receiver or an administrator is appointed over the Company's assets; or
 - 9.4.3 the Company is affected by a Force Majeure Event.
- 9.5 If the Customer has any questions or complaints, the Customer shall contact the Company by writing to it at its registered address specified on page 1, by calling 0114 2570563 or by e-mailing the Company at info@mechan.co.uk.

10. CONSEQUENCES OF TERMINATION

- 10.1 Except where expressly stated to the contrary, the rights and obligations of the parties under the Contract will cease immediately upon expiry or termination of the Contract. However, expiry or termination will not affect any accrued rights, obligations or liabilities.
- 10.2 On expiry or termination of the Contract, the Company will return any keys or other property of the Customer which has been provided to it in connection with the Goods and/or Services.

- 10.3 If the Company has any legal obligation or duty to continue providing any of the Goods and/or Services for any period of time after termination of the Contract, the Customer shall be liable to continue to accept and pay for those Goods and/or Services in accordance with the Terms of the Contract.
- 10.4 The following conditions of these Terms shall survive expiry or termination of the Contract for whatever reason:
- 10.4.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of the Goods and/or Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 10.4.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 10.4.3 clauses which expressly or by implication survive termination shall continue in full force and effect.

11. INDEMNITY

- 11.1 The Company shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with 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.
- 11.2 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

12. RETURNS AND WARRANTY FOR THE GOODS

- 12.1 The Company will provide a warranty that on Delivery and for a minimum period of 12 months from the date of Delivery (or 15 months from notification of readiness to deliver, whichever is the sooner) the Goods shall be free from defects in design, material and workmanship. However, this warranty does not apply in the circumstances described in clause 12.2.
- 12.2 The warranty in clause 12.1 does not apply to any defect in the Goods arising from:
- 12.2.1 fair wear and tear, including parts;

- 12.2.2 wilful damage, abnormal storage or working conditions, accident, negligence by the Customer or by any third party;
 - 12.2.3 misuse or alteration or repair of the Goods without the Company's approval;
 - 12.2.4 the Customer failing to operate or use the Goods in accordance with the user instructions supplied by the Company;
 - 12.2.5 the Customer failing to notify the Company promptly upon discovery, and for defects that would have been evident on Delivery, within 2 months of the Delivery of the Goods to the Customer, or which is so slight that it would be unreasonable for the Customer to reject the Goods or claim damages for the defect;
 - 12.2.6 any design or specification supplied by the Customer; or
 - 12.2.7 any alteration or repair by the Customer or by a third party who is not one of the Company's authorised repairers.
 - 12.2.8 any production downtimes or consequential loss
- 12.3 Where any valid claim in respect of any of the Goods is based on any defect in the quality or condition of the Goods or their failure to meet the Specification is notified to the Company in accordance with these Terms, the Company shall be entitled to replace the Goods (or the part or parts in question) free of charge or, at the Company's sole discretion, to refund to the Customer the Price (or a proportionate part of the Price), but the Company shall have no further liability to the Customer.
- 12.4 The Company's liability to the Customer is limited to the repair of the defective Goods at the manufacturer's work or supply of spare parts for the Customer to fit. If replacement parts are supplied for the Customer to fit, then the defective parts must be returned to the Company or the Customer will be liable for the value of those parts supplied at full list price. In any case, if parts are found not to be defective when returned and tested at the manufacturer's works, the Customer will be liable for the value of those parts, including the costs of delivery, at full list price (without deduction or discount).
- 12.5 The warranty is conditional upon the end client keeping an approved maintenance log that includes all scheduled servicing and any equipment incident reports. Mechan is to have full, open access to the maintenance log upon request. Maintenance of the equipment must be carried out in accordance to the O+M manual. Please refer to clause 10 of Mechan's terms and conditions of sale for further clarification.

13. LIMITATION OF LIABILITY

13.1 The Company only supplies the Goods for use by the Customer, and the Customer agrees not to use the Goods for any resale purposes.

13.2 Nothing in these Terms limits or excludes the Company's liability for:

13.2.1 death or personal injury caused by the Company's negligence;

13.2.2 fraud or fraudulent misrepresentation;

13.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);

13.2.4 defective products under the Consumer Protection Act 1987; and

13.2.5 the indemnity contained in clause 11.

13.3 Subject to clause 13.2, the Company will under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

13.3.1 any loss of profits, sales, business, or revenue;

13.3.2 loss or corruption of data, information or software;

13.3.3 loss of business opportunity;

13.3.4 loss of anticipated savings;

13.3.5 loss of goodwill; or

13.3.6 any indirect or consequential loss.

13.4 Subject to clause 13.2, the Company's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price of the Goods or the price of an individual component of the Goods which proves to be faulty and can be replaced.

13.5 Except as expressly stated in these Terms, the Company does not give any representation, warranties or undertakings in relation to the Goods. Any representation, condition or warranty which might be implied or incorporated into these Terms by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, the Company will not be responsible for ensuring that the Goods are suitable for the Customer's purposes.

14. FORCE MAJEURE

14.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under this agreement so long as and

to the extent to which the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event. A Force Majeure Event is defined below in clause 14.3.

14.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event:

14.2.1 notify the other party of the nature and extent of such Force Majeure Event; and

14.2.2 use all reasonable endeavours to remove any such causes and resume performance under this agreement as soon as feasible.

14.3 A **Force Majeure Event** means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes, without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

15. **ARBITRATION**

If at any time in question, dispute of difference whatsoever shall arise between the Contractor and the Customer upon, in relation to, or in connection with the Contract or the rights and obligations of the parties or as to any claim of damages by the one party against the other arising there from either party may give to the other notice in writing of the existence of such question, dispute of difference and the same shall thereupon be referred for decision under the Arbitration Act 1996, or any statutory modification or extension thereof to the decision of a person to be mutually appointed as Arbiter and the awards, interim or final, of any such person so appointed or nominated shall be final and binding upon the parties.

16. **INSURANCE**

It is agreed this Contract shall not in any way be construed as a contract for insurance against accident or damage.

17. **SEVERANCE**

17.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18. VARIATION AND WAIVER

18.1 Any variation of this agreement must be in writing and signed by or on behalf of the parties.

18.2 Any waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

18.3 No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy nor shall it prevent any future exercise or enforcement of such right or remedy.

18.4 No single or partial exercise of any right or remedy under this agreement shall prevent or restrict the further exercise of that or any other right or remedy.

19. NOTICES

19.1 A notice served under this agreement shall be signed by or on behalf of the party giving it, shall be sent for the attention of the person, and to the address given in this clause 19 and shall be sent by pre-paid first-class post or recorded delivery.

19.2 The addresses for service of notice are:

19.2.1 The Company: the Company's Premises

19.2.2 The Customer: the Delivery Address appearing in the purchase order

19.3 A notice or any other communication given in connection with this agreement is deemed to have been received at 9.00 am on the second Business Day after posting. To prove delivery, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.

20. ENTIRE AGREEMENT

20.1 This Contract constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

- 20.2 Each party acknowledges that, in entering into this agreement, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in this agreement.
- 20.3 Each party agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in this agreement.
- 20.4 Nothing in this clause shall limit or exclude any liability for fraud.

21. RIGHTS OF THIRD PARTIES

No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

22. GOVERNING LAW AND JURISDICTION

- 22.1 This agreement 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.
- 22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).



TERMS AND CONDITIONS OF PURCHASE

This Agreement is made between Mechan Limited a company registered in England and Wales with company number 00947728 whose registered office is at Building Number 5, Davy Industrial Park, Prince Of Wales Road, Sheffield, England S9 4EX (**Customer**) and the person, firm or company named as the supplier in the Order (**Supplier**).

1. DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

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

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 18.6.

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.

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

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

Specification: any specification for the Goods and/or Services, including any related plans and drawings that are agreed in writing by the Customer and the Supplier.

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 and e-mails.

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.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or 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,at which point the Contract shall come into existence.
- 2.4 The Order shall lapse unless accepted by the Supplier within 7 days of the date of the Order.

3. THE GOODS

- 3.1 The Supplier shall ensure that the Goods shall:
 - (a) correspond with their description and any applicable Specification;
 - (b) 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 judgment;
 - (c) where they are manufactured products, be free from defects in design, material and workmanship and remain so for 24 months after delivery; and
 - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

- (e) be provided by The Supplier only, not a subcontractor unless prior written approval from the Customer has been given.
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- 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 Customer shall have the right to inspect and test the Goods at any time before delivery.
 - 3.4 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.
 - 3.5 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.

4. DELIVERY

- 4.1 The Supplier shall ensure that:
 - (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - (b) each delivery of the Goods is accompanied by a delivery note 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), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (c) 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.
- 4.2 The Supplier shall deliver the Goods:
 - (a) on the date specified in the Order, or, if no such date is specified, within 28 days of the date of the Order (**Delivery Date**);

- (b) to the Customer's premises at Davy Industrial Park, Prince Of Wales Road, Sheffield, England S9 4EX 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 The time of delivery of the Goods is of the essence of the Contract.

4.4 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

4.5 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 4.6.

4.6 If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:

- (a) to terminate the Contract;
- (b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods within 7 days;
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and
- (f) 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.

4.7 If the Goods are not delivered on the Delivery Date the Customer may at its option claim or deduct 2 per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 10 per cent of the total price of the Goods. If the Customer exercises its rights under this clause 4.7, it shall not be entitled to any of the remedies set out in clause 4.6 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).

4.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

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

5. TITLE AND RISK

Title and risk in the Goods shall pass to the Customer on completion of delivery.

6. THE SERVICES

6.1 The Supplier shall from the date set in the Order and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.

6.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.

6.3 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 will conform with all descriptions and specifications set out in the Specification;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that 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;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises or the premises of the Customer's customer;

- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**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; and
- (j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.
- (k) not use sub-contractors to perform the Services unless prior written approval from the Customer has been given.

7. CUSTOMER REMEDIES

7.1 If the Supplier fails to perform the Services by the applicable dates, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute services from a third party;
- (d) where the Customer has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or
- (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

7.2 These Conditions shall extend to any substituted or remedial services provided by the Supplier.

7.3 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

8. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and

- (b) provide such information to the Supplier as the Supplier may reasonably request and the Customer considers reasonably necessary for the purpose of providing the Services.

9. PRICE AND PAYMENT

- 9.1 The price of the Goods and/or Services shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 9.2 The price of the Goods and/or Services is exclusive of amounts in respect of value added tax (**VAT**), but includes the costs of packaging, packing, shipping, carriage, delivery and insurance of the Goods and any duties, imposts or levies other than VAT. No extra charges shall be effective unless agreed in writing and signed by the Customer.
- 9.3 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 Goods and/or Services.
- 9.4 The Supplier may invoice the Customer for the Goods and/or Services on or at any time after the completion of delivery.
- 9.5 The Customer shall pay correctly rendered invoices within 60 days end of month of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 9.6 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The 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.
- 9.7 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 In respect of the Goods that are transferred to the Customer under this Contract, the Supplier warrants that it has full clear and unencumbered title to all such items,

and that at the Delivery Date of such items to the Customer, it will have full and unrestricted rights to transfer all such items to the Customer.

- 10.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products or the Services.
- 10.3 The Supplier shall obtain waivers of all moral rights in the products or 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.
- 10.4 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 10.2.

11. CUSTOMER MATERIALS

The Supplier acknowledges that the Customer Materials and all rights in the Customer material are and shall remain the exclusive property of the Customer.

12. INDEMNITY

- 12.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to 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 professional costs and expenses) suffered or incurred 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 for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
 - (c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, 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.

12.2 This clause 12 shall survive termination of the Contract.

13. INSURANCE

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, contractors all risks insurance and public liability insurance to cover the liabilities that 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.

14. CONFIDENTIALITY

14.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

14.2 This clause 14 shall survive termination of the Contract.

15. TERMINATION

15.1 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 any work in progress in respect of the Goods and/or Services at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

15.2 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- (b) 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 or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) 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;
- (d) (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;
- (e) (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;
- (f) (being a company) the holder of a qualifying floating charge over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
- (g) (being an individual) the Supplier is the subject of a bankruptcy petition or order;
- (h) 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;
- (i) a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
- (j) 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 15.2(b) to clause 15.2(i) inclusive;
- (k) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;

- (l) 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
- (m) (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.

15.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

15.4 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

16. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason, the Supplier shall immediately return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

17. FORCE MAJEURE

17.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from an event, circumstance or cause beyond its reasonable control (**Force Majeure Event**).

17.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

17.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 30 Business Days, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

18. GENERAL

18.1 Assignment and other dealings.

- (a) The Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights

or obligations under the Contract without the prior written consent of the Customer.

18.2 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 or other next working day delivery service, commercial courier, fax or e-mail.
- (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 18.2(a); 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; 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 or e-mail, 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.

18.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

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

18.5 Third party rights. A person who is not a party to the Contract shall not have any rights to enforce its terms.

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

- 18.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 18.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).