

SANDON GLOBAL ENGINEERING LTD

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES

MARCH 2020

The Customer's attention is particularly drawn to the provisions of Condition 13 (Limitation of liability).

1. Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in these Conditions:

Business Day:	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
Commencement Date:	has the meaning given to it in Condition 2.3;
Conditions:	these terms and conditions as amended from time to time in accordance with Condition 19.7:
Contract:	the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions comprising of the Conditions and the Order Confirmation;
Control:	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly;
Customer:	the person or firm named in the Order Confirmation who purchases the Goods and/or Services from the Supplier;
Customer Complaint Process:	the Supplier's customer complaint process in effect from time to time, a copy of which is available on request;
Customer's Premises	the location set out as such in the Order Confirmation;
Deliverables:	the deliverables set out in the Order Confirmation;
Delivery:	means completion of delivery of the Goods specified in an Order Confirmation in accordance with Condition 4.3;
Delivery Date:	the date specified for delivery of the Goods specified in an Order Confirmation or if no such date is stated, the date which is agreed between the parties from time to time;
Delivery Point:	the Customer's Premises or such other location as the Customer specifies on the Order Confirmation or agreed in accordance with Condition 4.4;
Force Majeure Event:	means events, circumstances or causes beyond the Supplier's reasonable control, including, strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm shortage of raw materials or default of suppliers or subcontractors;
Goods:	the goods (or any part of them) set out in the Order Confirmation;
Goods Specification:	the specifications (if any) set out in the Order Confirmation and any other specification for the Goods, including any relevant drawings, dimensions and engraving specifications that are provided by the Customer to the Supplier or that are agreed in writing by the Customer

and the Supplier from time to time;

Intellectual Property Rights:	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
Laws:	all applicable statutory and other laws, rules, regulations, instruments, orders and/or provisions in force in from time to time;
Order:	the Customer's order for the supply of Goods and/or Services;
Order Confirmation:	has the meaning given in Condition 2.3;
Quotation:	the quotation provided by the Supplier for the supply of Goods and/or Services to the Customer;
Services:	the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification;
Service Specification:	the description or specification for the Services agreed in writing by the Supplier and the Customer or, if no specifications are so agreed, the specifications set out in the Quotation;
Standard Rates:	has the meaning given to it in Condition 10.2.1;
Supplier:	Sandon Global Engineering Ltd registered in England and Wales with company number 03344349;
Supplier Materials:	has the meaning given in Condition 9.1.8;
VAT:	value added tax as provided for in the Value Added Tax Act 1994, any goods or services sales tax or any other tax of a similar nature.

- 1.2 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 a reference to a party includes its personal representatives, successors and permitted assigns.
- 1.4 a reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.5 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.6 references to the **singular** shall include the **plural** and vice versa, and to the **masculine** shall include the **feminine** and **neuter** and vice versa.
- 1.7 a reference to **writing** or **written** includes email but not fax.
- 1.8 a reference to a time shall mean that time in the United Kingdom.

2. Basis of contract

- 2.1 Following the receipt of a Quotation from the Supplier, the Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 Any Quotation given by the Supplier shall not constitute an offer, and a Quotation is only valid for a period of ninety (90) calendar days from its date of issue.
- 2.3 An Order shall only be deemed to be accepted when the Supplier issues written acceptance of an Order by way of order confirmation (**Order Confirmation**) at which point, and on which date, the Contract shall come into existence (**Commencement Date**). The Contract shall only relate to those Goods and/or Services listed in the Order Confirmation.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures, or on its website are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

- 3.1 The Goods are described in the Order Confirmation and Goods Specification (if any).
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This Condition 3.2 shall survive termination of the Contract.
- 3.3 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer acknowledges and accepts that it shall be responsible for the measurements provided to the Supplier in that Goods Specification.
- 3.4 The Supplier reserves the right to amend the Goods Specification if required by Law, and the Supplier shall notify the Customer in any such event.

4. Delivery of Goods

- 4.1 The Supplier shall ensure that each Delivery of the Goods is accompanied by a delivery note which shows the date of dispatch, all relevant Customer and Supplier order reference numbers, the type and quantity of the Goods (including the quantity and the description of the Goods, and the delivery note number), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of the Goods remaining to be delivered.
- 4.2 The Customer shall retain any packaging materials so that any Goods can be returned to the Supplier for refurbishment in the future. Any replacement of lost or disposed of packaging materials shall be at the Customer's expense.
- 4.3 Delivery of the Goods shall be deemed completed on completion of the unloading of the Goods at the loading facility at the Delivery Point where the Supplier is arranging transport of the Goods to

the Delivery Point, or where the Customer is arranging collection of the Goods from the Delivery Point on completion of the loading of the Goods at the Delivery Point.

- 4.4 The Customer may request a change to the Delivery Point no less than 3 (three) Business Days before the Delivery Date. Acceptance of any change to the Delivery Point requested by the Customer shall be at the Supplier's sole discretion and the Customer shall be liable for any additional expenses incurred by the Supplier as a result of such change.
- 4.5 Unless otherwise agreed between the parties, the Supplier shall arrange for transport to the Delivery Point. On Delivery, the Supplier (or its appointed carrier) shall provide the Customer with a delivery note.
- 4.6 Where the parties agree in writing that the Customer shall collect the Goods from the Delivery Point, the Customer shall arrange collection of the Goods from the Delivery Point within three (3) Business Days of the Supplier notifying the Customer that the Goods are ready for collection.
- 4.7 Any Delivery Date quoted for delivery of the Goods is an approximate estimated delivery date only, and the time of delivery is not of the essence.
- 4.8 The Supplier shall not be liable for any delay in delivery of the Goods that is caused by:
- 4.8.1 a Force Majeure Event; or
 - 4.8.2 the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply or delivery of the Goods.
- 4.9 The Supplier shall not be liable for any failure to deliver the Goods that is caused by:
- 4.9.1 a Force Majeure Event; or
 - 4.9.2 the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.10 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 4.11 If the Customer fails to take or accept delivery of the Goods, or collect the Goods as per Condition 4.6 at the Delivery Point (as the context requires) within three (3) Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 4.11.1 Delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourth (4th) Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - 4.11.2 the Supplier shall store the Goods until Delivery or collection (as the context requires) takes place and charge the Customer for all related costs and expenses (including storage and insurance).
- 4.12 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for Delivery the Customer has not taken or accepted Delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.13 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in Delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

- 4.14 The Customer shall, within seven (7) days of the Delivery Date give written notice of rejection to the Supplier in accordance with the Customer Complaint Process where the Customer is rejecting the Goods due to any defect in the Goods or where such defect or failure to comply with the Goods Specification was apparent on reasonable inspection of the Goods by the Customer.
- 4.15 If the Customer fails to give notice as specified in Condition 4.14 then, except in respect of any defect or non-compliance with the Goods Specification which is not one which would be apparent on reasonable inspection, the Goods shall conclusively be presumed to comply with the Goods Specification and, accordingly, the Customer shall be deemed to have accepted the Delivery of the Goods in question and the Supplier shall have no liability to the Customer with respect to that delivery (except in relation to liability for any latent defects).
- 4.16 If the Customer alleges that any Goods do not comply with the Goods Specification, it shall, if so requested by the Supplier and/or in accordance with the Customer Complaint Process return the relevant Goods (unaltered and unrepaired) to the Supplier for inspection as soon as possible and at its own risk and expense.
- 4.17 If the Customer rejects any delivery of the Goods which it claims do not comply with the Goods Specification, the Supplier shall, investigate and report on such rejection in accordance with the Supplier's complaint process in effect from time to time.
- 4.18 Following the investigation into a Customer's rejection and delivery of the Goods and where the Supplier accepts that the Goods do not comply with the Goods Specification, the Supplier shall within a timeframe agreed between the parties (taking into account the Supplier's manufacture lead time of at least 6 weeks):
- 4.18.1 supply replacement Goods which comply with the Goods Specification, in which event the Supplier shall be deemed not to be in breach of this Contract or have any liability to the Customer for the rejected Goods; or
 - 4.18.2 notify the Customer that it is unable to supply replacement Goods, in which case the Supplier shall grant to the Customer a credit equal to the value of the Goods which the Supplier agrees do not comply with the Goods Specification (**Credit**).
- 4.19 The Supplier's decision as to whether the Goods comply with the Goods Specification shall be final.

5. Import and Export Licences

- 5.1 The Customer is responsible for obtaining, at its own cost, such import and export licences and other consents in relation to the Goods as are required from time to time and, if required by the Supplier, the Customer shall make those licences and consents available to the Supplier prior to the relevant shipment.

6. Quality of Goods

- 6.1 The Supplier warrants that on delivery, and for a period of twelve (12) months from the date of delivery (**warranty period**), the Goods shall, subject to the industry standard reduction in printing volume tolerance level as a result of regular use:
- 6.1.1 conform in all material respects with the Goods Specification;
 - 6.1.2 be free from material defects in design, material and workmanship; and
 - 6.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - 6.1.4 be fit for any purpose held out in writing by the Supplier as the appropriate purpose for which the Goods should be used.

- 6.2 Subject to Condition 6.3, the Supplier shall, at its option and in its absolute discretion, repair or replace Goods which do not comply with the warranty given in Condition 6.1 (**Defective Goods**), or refund the price of such Defective Goods in full if:
- 6.2.1 the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Condition 6.1;
 - 6.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
 - 6.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, quoting the Goods' Return Number provided by the Supplier.
- 6.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in Condition 6.1 if:
- 6.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with Condition 6.2;
 - 6.3.2 the defect in the Goods arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 6.3.3 the defect in the Goods arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
 - 6.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 6.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 6.4 Except as provided in this Condition 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Condition 6.1.
- 6.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under Condition 6.2 for the remainder of the Warranty Period of the Defective Goods that have been repaired or replaced only.

7. Title and risk

- 7.1 Risk in and responsibility for the Goods shall pass to the Customer on completion of Delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods or Services that the Supplier has supplied to the Customer.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

- 7.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in Condition 14.1.2 to Condition 14.1.3; and
 - 7.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 7.4 Subject to Condition 7.3, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 7.4.1 it does so as principal and not as the Supplier's agent; and
 - 7.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Condition 14.1.2 to Condition 14.1.3, or the Supplier reasonably believes that any such event is about to occur and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product then, without limiting any other right or remedy the Supplier may have:
- 7.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - 7.5.2 the Supplier may at any time:
 - (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (b) if the Customer fails to up all Goods in its possession promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. Supply of Services

- 8.1 The Supplier shall supply the Services to the Customer in accordance with the Quotation in all material respects.
- 8.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order Confirmation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Supplier 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 the quality of the Services, and the Supplier shall notify to Customer in any such event.
- 8.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

9. Customer's obligations

- 9.1 The Customer shall:
 - 9.1.1 ensure that the terms of the Order and any information it provides in the Goods Specification are complete and accurate;
 - 9.1.2 co-operate with the Supplier in all matters relating to the Services;

- 9.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - 9.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 9.1.5 prepare the Customer's premises as advised by the Supplier and as necessary to facilitate the supply of the Services;
 - 9.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 9.1.7 comply with all applicable laws, including health and safety laws;
 - 9.1.8 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
 - 9.1.9 comply with any additional obligations as set out in the Goods Specification.
- 9.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**) without limiting or affecting any other right or remedy available to it, the Supplier shall:
- 9.2.1 have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations; and
 - 9.2.2 not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Condition 9.2.
- 9.3 The Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

10. Charges and payment

- 10.1 The price for Goods and/or Services:
- 10.1.1 shall be the price set out in the Order Confirmation or, if no price is set out in the Order Confirmation, the price set out in the latest version of the Quotation that relates to that particular Order; and
 - 10.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid for by the Customer when payment for the Goods is made.
- 10.2 The charges for Services shall be calculated on a time and materials basis:
- 10.2.1 the charges shall be calculated in accordance with the Supplier's daily fee rates from time to time (**Standard Rates**);
 - 10.2.2 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and

for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials; and

10.2.3 the Supplier shall be entitled to charge the Customer at a rate of one-eighth of the Standard Rate for any hour or part thereof where the Supplier is prevented or hindered from providing the Service due to a Customer Default.

10.3 The Supplier reserves the right to:

10.3.1 increase the price of the Goods and/or the Standard Rates for the Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

(a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

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

10.4 In respect of Goods and the Services, the Supplier shall invoice the Customer on dispatch of the Goods.

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

10.5.1 within thirty (30) days of the date of the invoice or in accordance with any Credit terms agreed by the Supplier and confirmed in writing to the Customer; and

10.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier.

10.6 Time for payment shall be of the essence of the Contract.

10.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

10.8 Without limiting any other right or remedy of the Supplier under the Contract, if the Customer fails to make a payment due to the Supplier under the Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Condition 10.8 will accrue on a daily basis at 3% a year above the then current National Westminster Bank's base rate from time to time, but at 3% (three percent) a year for any period when that base rate is below 0% (zero percent).

10.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Law) in order to justify withholding payment of any such amount in whole or in part.

10.10 The Supplier may, without limiting its other rights or remedies under the Contract, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

11. Intellectual property rights

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Goods or the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier (or its licensors).
- 11.2 Nothing in this Contract shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights in the Goods or the Services, other than as set out in Condition 11.3.
- 11.3 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to use the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 11.4 The Customer shall not sub-license, assign or otherwise transfer the rights granted by Condition 11.3.
- 11.5 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 11.6 All Supplier Materials are the exclusive property of the Supplier.
- 11.7 If at any time it is alleged that the Goods infringe the rights of any third party, the Supplier may at its option and its own cost:
- 11.7.1 modify or replace the Goods in order to avoid the infringement; or
 - 11.7.2 procure for the Customer the right to continue using the Goods.
- 11.8 The Customer shall promptly and fully notify the Supplier of any actual, threatened or suspected infringement, or any claim made by a third party, of any Intellectual Property Rights which comes to the Customer's notice.
- 11.9 The Customer agrees to do all such things as may be reasonably required to assist the Supplier in taking or resisting any proceedings in relation to any infringement or claim referred to in Condition 11.8.
- 11.10 In the event of any claim, proceeding or suit by a third party against the Customer alleging an infringement of any Intellectual Property Right connected with the Goods, the Supplier shall defend the Customer at the Supplier's expense, subject to:
- 11.10.1 the Customer promptly notifying the Supplier in writing of any such claim, proceeding or suit; and
 - 11.10.2 the Supplier being given sole control of the defence of the claim, proceeding or suit,
- and provided that the Supplier shall not be liable for infringements to the extent that they arise out of or in connection with modifications to the Goods made by anyone except the Supplier or its authorised representative, or out of use or combination of the Goods with products or third party materials not specified or expressly approved in advance in writing by the Supplier, or where the claim, proceeding or suit arises from the Supplier's adherence to the Customer's Goods Specification (or any requested changes to the same) or from infringing items of the Customer's origin, design or selection.

12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five (5) years after termination of the Contract or for the period which the information remains confidential

by its nature (whichever is longer), disclose to any person any confidential information concerning the business, affairs, products, manufacturing processes, customers, clients or suppliers of the other party, except as permitted by Condition 12.2.

12.2 Each party may disclose the other party's confidential information:

12.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Condition 12; and

12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION.

13.1 This Condition 13 sets out the entire liability of the Supplier, its agents, employees and representatives in respect of:

13.1.1 any breach of its contractual obligations arising under and/or in connection with this Contract;

13.1.2 any use made by the Customer of the Goods, Services, and/or Deliverables or any part of them;

13.1.3 any misrepresentation, mis-statement or tortious act or omission (including negligence but excluding any of the same made fraudulently) arising under or in connection with this Contract;

13.1.4 any other provision of this Contract; and

13.1.5 any act or omission on the part of the Supplier, falling within Conditions 13.1.1 to 13.1.4 (inclusive),

(a **Liability Event**).

13.2 Nothing in this Contract shall limit or exclude the liability of Supplier for:

13.2.1 death or personal injury resulting from its own 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 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

13.2.4 to the extent that such liability or exclusion is not permitted by Law.

13.3 Subject to Condition 13.2, the total liability of the Supplier (including its agents, employees and representatives) in respect of all Liability Events arising in relation to the Goods, Services, and any Deliverables or otherwise under this Contract shall be limited to the amount paid by the Customer to the Supplier under this Contract.

13.4 Subject to Condition 13.2, the Supplier shall not be liable to the Customer in respect of any Liability Event for any loss or damage which may be suffered by the Customer (or any person claiming through or under the Customer) whether the same are suffered directly or indirectly and whether

the same arise in contract, tort (including negligence) or otherwise howsoever, which falls within the following categories:

- 13.4.1 loss of profits;
- 13.4.2 loss of business;
- 13.4.3 loss of goodwill and/or similar losses;
- 13.4.4 loss of anticipated savings;
- 13.4.5 loss of Goods;
- 13.4.6 loss of contract;
- 13.4.7 loss of use;
- 13.4.8 loss of, or corruption of, data or information or software; or
- 13.4.9 any special, indirect or consequential loss,

provided that this Condition 13.4 shall not prevent claims for direct financial loss that are not excluded by Conditions 13.4.1 to 13.4.9 inclusive.

13.5 The Supplier shall not be liable for any damage or losses to the extent they arise result of or in connection with:

- 13.5.1 any failure of the Customer to observe and perform its obligations under the Contract;
- 13.5.2 any unauthorised or incorrect access or use of the Goods, Services and/or any Deliverables or use other than in accordance with the terms of the Contract or the Supplier's instructions;
- 13.5.3 any modification or alteration of the Goods, Services, or any Deliverables by any party other than the Supplier;
- 13.5.4 errors or omissions in any of the Goods, Services, or any Deliverables to the extent they are based on and/or relate to the information, instructions or Customer materials or Goods Specification provided by the Customer to the Supplier; or
- 13.5.5 any actions taken by the Supplier at the Customer's direction.

13.6 If a number of Liability Events give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim under the Contract.

13.7 All warranties, conditions and other terms implied by statute or common law (including the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by Law, excluded from the Contract.

13.8 This Condition 13 shall survive termination of the Contract.

14. Termination

14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 14.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within fourteen (14) days after receipt of notice in writing to do so;

- 14.1.2 the other party takes any step or action in connection with its entering administration, insolvency, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure to the foregoing in this jurisdiction or any other relevant jurisdiction; or
 - 14.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 14.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract:
- 14.2.1 by giving the Customer no less than one (1) month's written notice;
 - 14.2.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 14.2.3 the Customer's financial position deteriorates to such an extent that in the Supplier's reasonable opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
 - 14.2.4 with immediate effect by giving written notice to the Customer if there is a change of control of the Customer.
- 14.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in Condition 14.1.2 to Condition 14.1.3, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

15. Consequences of termination

- 15.1 On termination of the Contract:
- 15.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and/or Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 15.1.2 the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for at its own expense. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

16. Force majeure

- 16.1 The Supplier shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event.

16.2 If a Force Majeure Event prevents the Supplier from providing any of the Goods and/or Services for more than eight (8) weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

17. Dispute Resolution

17.1 If a dispute arises out of or in connection with the Contract, its existence, the performance, validity or enforceability of it or any of its terms (**Dispute**) then except as expressly provided in the Contract, either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with any relevant supporting documents.

17.2 On service of the Dispute Notice, the parties shall attempt in good faith to negotiate a settlement to the Dispute between them within thirty (30) days of service of the Dispute Notice and such efforts will involve the escalation of the Dispute to the senior management of each party.

17.3 If the Dispute cannot be resolved by the parties pursuant to Condition 17.2, for the benefit of the Supplier, and subject to Condition 17.4, the parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear, settle and/or determine any dispute, controversy or claim (including any non-contractual dispute, controversy or claim) arising out of or in connection with this agreement, including any question regarding its existence, validity, formation or termination. For these purposes, each party irrevocably submits to the jurisdiction of the English courts.

17.4 Nothing in this Condition 17 limits the right of the Supplier to bring proceedings, including third party proceedings, against the Customer via arbitration as detailed in Condition 17.7 or in any other court of competent jurisdiction, and the bringing or continuing of proceedings in any one or more jurisdictions shall not preclude the bringing of proceedings in any other jurisdiction, whether concurrently or not, if and to the extent permitted by applicable law.

17.5 Prior to the Supplier issuing proceedings against the Customer, the Supplier shall serve notice in writing to the Customer of its decision to exercise either the option granted to it in Condition 17.3, or Condition 17.4.

17.6 Nothing in this Condition 17 shall prevent the Supplier from taking any steps it considers necessary (at its sole discretion) in any forum or jurisdiction it considers appropriate (at its sole discretion) in advance of serving the notice required by Conditions 17.5, such steps may include applications for injunctive relief whether or not such applications are on notice to the Customer.

17.7 Where the Supplier opts under Condition 17.4 to refer the Dispute to be finally resolved by arbitration, such arbitration will take place under the LCIA Rules, which Rules are deemed to be incorporated by reference into this Condition 17.

17.8 The number of arbitrators shall be three (who are to have a background in English commercial contract law and be experienced in disputes involving the international manufacture and supply of goods and services).

17.9 In default of the parties' agreement as to the arbitrator, the appointing authority shall be the LCIA.

17.10 The seat, or legal place, of arbitration shall be London.

17.11 The language to be used in the arbitral proceedings shall be English.

17.12 The governing law of this Contract shall be the laws of England.

18. Notices.

18.1 Any notice or other communication given by a party under this Contract shall:

18.1.1 be in writing and in English; and

18.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email).

- 18.2 Any notice or other communication required to be given to a party under or in connection with this Contract shall be delivered to the other party:
- 18.2.1 by hand to the other party's registered office (if a company) or (in any other case) its principal place of business; or
 - 18.2.2 by prepaid first-class post, recorded delivery; or
 - 18.2.3 by commercial courier if being sent internationally, at (in the case of 18.2.1, 18.2.2 or 18.2.3) the other party's registered office (if a company) or (in any other case) its principal place of business; or
 - 18.2.4 subject to the provisions of Condition 18.4, by email at the email address of the other party set out in the Order (in the case of notices to the Customer) or set out in the Order Confirmation (in the case of notices to the Supplier) or to such other email address of which either party shall notify the other in writing as its email address for this purpose.

18.3 All references to time are to the local time at the place of deemed receipt.

18.4 This Condition 18 does not apply to notices given in legal proceedings or arbitration.

19. General

19.1 Assignment and other dealings

19.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

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

19.2 **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 Condition 19.2 shall not affect the validity and enforceability of the rest of the Contract.

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

19.4 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

19.5 Entire agreement.

19.5.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.5.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party

agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

19.5.3 Nothing in this Condition shall limit or exclude any liability for fraud.

19.6 **Third party rights.** Unless it expressly states otherwise, No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

19.7 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).