

# Plant Terms and Conditions of Sale

## 1. Definitions

1.1. In these Conditions, except where the content otherwise requires, the following definitions apply:

**Business Days** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**Buyer** means the person, firm or company with whom the Seller contracts subject to these Conditions;

**Conditions** means these terms and conditions, as amended from time to time in accordance with clause 22.1;

**Delivery Date** means the date for delivery of the Goods and/or Services as set out in the Order or otherwise agreed between the parties in writing;

**Goods** means the articles, products and goods including samples to be provided by the Seller to the Buyer as set out in the Specification, installed and operated in accordance with the user manual and installation guide, as provided by the Seller;

**Insolvency Situation** means a party takes any step or action in connection with: (i) entering administration or provisional liquidation; (ii) having a receiver, liquidator, administrator, trustee or an individual with a similar role appointed over any of its assets; (iii) any composition or arrangement with its creditors (other than in relation to solvent restructuring); (iv) obtaining moratorium; (v) being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring); (vi) ceasing to carry on business; or (vii) any event occurs, or proceeding is taken in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events listed in (i) to (vi) above;

**Intellectual Property Rights** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**Order** means the Buyer's order for the Goods and/or Services as set out in the Buyer's purchase order form;

**Price** means the price paid by the Buyer for the Goods and/or Services in accordance with clause 10;

**Product Manual** means the written manual, associated with the specific product as set out in the Specification, provided by the Seller on delivery of the Goods;

**Seller** means Clade Engineering Systems Ltd, a company incorporated in England and Wales with company number 06511662 and having its registered address at Bristol & Bath Science Park, Dirac Crescent, Emersons Green, Bristol, BS16 7FR, whether it accepts the Order on its own behalf or on behalf of its related company;

**Services** means the services to be provided by the Seller to the Buyer as set out in the Specification;

**Specification** means any specification for the Goods and/or Services, including any related plans and drawings, that is agreed in writing by the Buyer and the Seller;

**Storage Date** means the date for the storage of the Goods as set out in the Order or otherwise agreed between the parties in writing;

**Vesting Date** means the date for the vesting of the Goods as set out in the Order or otherwise agreed between the parties in writing; and

**WEEE** means waste electrical and electronic equipment and has the same meaning given to the term in the Waste Electrical and Electronic Equipment Regulations 2013 together with any other applicable subordinate legislation (the "**Regulations**").

## 2. Basis of Contract

2.1. These Conditions apply to the Order to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing (to the extent permitted by law).

2.2. The Order constitutes an offer by the Buyer to purchase the Goods and/or Services in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3. The Order shall only be deemed to be accepted, and a contract formed between the parties, on the earlier of:

2.3.1. the Seller issuing a written acceptance of the Order; and

2.3.2. the Seller dispatching the Goods or performing the Services.

2.4. The Order and these Conditions constitute the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Order and/or these Conditions. This includes, but is not limited to;

2.4.1. Sales documentation;

2.4.2. Technical advice; and

2.4.3. Technical documentation, other than the appropriate Product Manual.

2.5. The Order shall only be modified if agreed in writing between the parties. Should the Buyer wish to modify any of the terms of the Order, it shall request such modification in writing at least 15 Business Days before the Delivery Date and the request for modification shall only be approved upon issue of the Seller's written consent to the modification. Consent to any modifications shall be entirely at the Seller's discretion. The Seller shall be entitled to amend the Price to take account of any such modifications and the Buyer agrees to pay the amended Price.

2.6. A quotation for the Goods and/or Services given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

2.7. 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 and/or Services

- 3.1. The Goods and/or Services are described in the Specification. Any samples, drawings, descriptive matter, advertising, illustrations or other documents and/or information produced by the Seller which do not form part of the Specification are for reference only and shall not form part of the Order and/or these Conditions nor have any contractual force.
- 3.2. To the extent that the Goods and/or Services are to be manufactured and/or performed (as applicable) in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller by a third party (including but not limited to a claim by a third party for actual or alleged infringement of a third party's Intellectual Property Rights) arising out of or in connection with the Seller's use of the Specification supplied by the Buyer. This clause 3.2 shall survive termination of the Order and/or these Conditions.
- 3.3. The Seller reserves the right to amend the Specification if required by any applicable legal or regulatory requirements and, in case of the Services, if the amendment will not materially affect the nature or quality of the Services.
- 3.4. The Buyer shall comply in all respects with the Regulations when the Goods are discarded as WEEE (and otherwise as applicable), and shall be responsible for any liability incurred in respect of the Regulations (or otherwise in respect of WEEE).
- 3.5. The Seller may, for commercial reasons only, offer to remove WEEE when the Buyer is purchasing new Goods. This will be decided on a case by case basis and the Buyer acknowledges and accepts that it may be required to pay an increased Price if it chooses to have any applicable WEEE removed by the Seller.
- 3.6. The Seller shall supply the Services to the Buyer in accordance with the Specification in all material respects.
- 3.7. The Seller shall use its reasonable endeavours to meet any performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.8. The only performance data to be used for comparison against product performance data standards for the Goods, as published by the Seller, shall be that provided by the Seller and the Seller's proprietary systems.
- 3.9. The collection and analysis of performance data is a chargeable Service.
- 3.10. The Seller does not accept any responsibility for, or accept the validity of: metering, monitoring, verification or analysis of performance data provided by third party meters.
- 3.11. Unless specifically described otherwise in the Specification the Buyer shall:
  - 3.11.1. co-operate with the Seller in all matters relating to the Goods and/or Services;
  - 3.11.2. provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Seller to provide the Goods and/or Services;
  - 3.11.3. provide the Seller with such information and materials as the Seller may reasonably require in order to supply the Goods and/or Services, and ensure that such information is complete and accurate in all material respects;
  - 3.11.4. prepare the Buyer's premises for the supply of the Goods and/or Services;
  - 3.11.5. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Goods and/or Services are to be operational;
  - 3.11.6. comply with all applicable laws, including health and safety laws;
  - 3.11.7. keep all materials, equipment, documents and other property of the Seller ("**Seller Materials**") at the Buyer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation;
  - 3.11.8. retain responsibility for the design and/or installation of the systems that the Goods and/or Services are connected to;
  - 3.11.9. retain responsibility for the systems, and the operation of the systems, that the Goods and/or Services are connected to, including (but not limited to): heating, refrigeration, electrical, control or hydraulic systems; and
  - 3.11.10. comply with any additional obligations as set out in the Specification.
- 3.12. If the Seller's performance of any of its obligations under the Order and/or the Conditions is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("**Buyer Default**"):
  - 3.12.1. without limiting or affecting any other right or remedy available to it, the Seller shall have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
  - 3.12.2. the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 3.10; and
  - 3.12.3. the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.

### 4. Delivery - Transport

- 4.1. Unless otherwise set out on the Order, the Buyer shall arrange for the Goods to be collected from the Seller's premises ("**Delivery Location**") either by the Buyer or by an agent or carrier appointed by the Buyer within three Business Days of the

Seller notifying the Buyer that the Goods are ready. The Buyer shall provide written confirmation to the Seller of the person collecting the Goods at least two Business Days prior to collection.

- 4.2. Delivery of the Goods shall be completed on the passing of the Goods to the Buyer (or agent/carrier appointed by the Buyer) at the Delivery Location.
- 4.3. Any dates quoted for delivery are approximate only and time of delivery is not of the essence.
- 4.4. If the Seller fails to deliver the Goods at the Delivery Location, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 4.5. The Seller shall not be liable for any delay in delivery of the Goods and/or performance of the Services caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions relevant to the supply of the Goods and/or Services.
- 4.6. The Seller shall not be liable in respect of any damage in transit or for the Goods not arriving at the Buyer's premises where the Buyer has arranged for the Goods to be collected from the Delivery Location by an agent or carrier. The Seller shall not be required to take any action with either the Buyer or the agent or carrier to resolve the issue of non-delivery and/or damage to the Goods.
- 4.7. Where the Buyer requests that delivery be postponed, or any action of the Buyer means that delivery is postponed, the Buyer shall be liable to pay to the Seller a storage charge calculated at 0.1% of the value of the Goods per day in relation to which delivery is postponed.
- 4.8. If the Buyer fails to take delivery of the Goods within three Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Order:
  - 4.8.1. delivery of the Goods shall be deemed to have been completed at 9.00am on the third Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and
  - 4.8.2. the Seller shall store the Goods until delivery takes place, and charge the Buyer as set out in clause 4.7, unless the Buyer has paid for the Goods in full. If the Buyer pays for the Goods in full after placing the Order (and before taking delivery of them), the storage charge will reduce to 0.05% of the value of the Goods per day in relation to which delivery has not yet taken place.
- 4.9. If one month after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not taken delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Buyer for any shortfall below the price of the Goods.
- 4.10. The Seller may deliver the Goods and/or perform the Services by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

## 5. Risk and Title

- 5.1. The risk in the Goods shall pass to the Buyer on delivery.
- 5.2. Title to the Goods shall not pass to the Buyer until the earlier of: (a) the Seller receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; or (b) the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer as set out in clause 5.5.
- 5.3. Until title to the Goods has passed to the Buyer, the Buyer shall:
  - 5.3.1. hold the Goods on a fiduciary basis as the Seller's bailee;
  - 5.3.2. store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
  - 5.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.3.4. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the Delivery Date;
  - 5.3.5. notify the Seller immediately if it becomes subject to any of the events listed in clause 12; and
  - 5.3.6. give the Seller such information relating to the Goods and the ongoing financial position of the Buyer, as the Seller may require from time to time.
- 5.4. Where the Buyer fails to comply with clause 5.3, the Buyer shall, upon request by the Seller, return the Goods to the Seller at its own risk and expense.
- 5.5. The Buyer may resell the Goods before title has passed to it solely on the following conditions:
  - 5.5.1. any sale will be affected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Seller accordingly; and
  - 5.5.2. any such sale will be a sale of the Seller's property on the Buyer's own behalf and the Buyer will deal as principal (and not the Seller's agent) when making such a sale, and title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.
- 5.6. Where the Buyer is subject to any of the events set out in clauses 12.3.1 to 12.3.4 or is subject to an out of court settlement, and title to the Goods has not yet passed to the Buyer, the Buyer shall immediately notify the Seller and shall provide to the Seller at the Buyer's expense an inventory of the Goods it has in its possession. The Seller shall be entitled to collect any Goods the Buyer has in its possession at the Seller's convenience and the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately.

## 6. Returns/Cancellation

- 6.1. Except where otherwise provided for in these Conditions, the Buyer shall only return Goods to the Seller where it has received written consent from the Seller to do so. Where Goods are returned in accordance with this clause 6.1, the Goods shall be transported at the Buyer's risk and cost. Where the Buyer returns Goods without written consent from the Seller to do so, the Goods shall be stored or disposed of by the Seller at the Buyer's risk (where relevant) and cost.
- 6.2. Orders/ part Orders cannot be cancelled by the Buyer without written consent from the Seller.
- 6.3. The Seller will be entitled to raise an invoice to the Buyer for a proportion of the Price, and the Buyer will be liable to pay such invoice as per clause 11 if the Order/part Order is cancelled by the Buyer.
  - 6.3.1. The proportion of the Price to be invoiced and paid will depend on the time between the notification of the cancellation and the Delivery Date ("**Cancellation Period**"), and will vary as follows:

Cancellation Period	Proportion of Price to be Invoiced	Cancellation Period	Proportion of Price to be Invoiced
1) Greater than 9 weeks	30%	6) Greater than 4 weeks & less than 5 weeks	80%
2) Greater than 8 weeks & less than 9 weeks	40%	7) Greater than 3 weeks & less than 4 weeks	90%
3) Greater than 7 weeks & less than 8 weeks	50%	8) Greater than 2 weeks & less than 3 weeks	100%
4) Greater than 6 weeks & less than 7 weeks	60%	9) Greater than 1 week & less than 2 weeks	100%
5) Greater than 5 weeks & less than 6 weeks	70%	10) Less than 1 week	100%

## 7. Warranty

- 7.1. The Seller warrants (the "**Warranty**") that for a period of; 12 months with regard to refrigeration only Goods, or 24 months for other Goods, from the earlier of the Delivery Date, the Storage Date, or the Vesting Date (the "**Warranty Period**"), the Goods shall:
  - 7.1.1. conform in all material respects with their description in the Specification;
  - 7.1.2. be free from material defects in design, material and workmanship;
  - 7.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - 7.1.4. be fit for any purpose held out by the Seller.
- 7.2. Subject to clause 7.3, the Seller will, at its option, replace or repair free of charge any part or parts of the Goods which are defective, or refund the price of the defective Goods, provided that the Buyer complies with its obligations at clause 7.4.
- 7.3. The Seller shall not be liable for the Goods' failure to comply with the Warranty in any of the following events:
  - 7.3.1. the Buyer is attempting to claim under the Warranty for reasonable wear and tear which has occurred to the Goods during the Warranty Period;
  - 7.3.2. the Buyer makes any further use of the Goods after giving notice in accordance with clause 7.4;
  - 7.3.3. the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commission, installation, use and/or maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - 7.3.4. the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;
  - 7.3.5. the defect arises as a result of wilful damage, negligence or abnormal storage or working conditions;
  - 7.3.6. the Buyer or a third party alters or repairs the Goods without the written consent of the Seller;
  - 7.3.7. the claim relates to glass parts and refrigerating fluids;
  - 7.3.8. the Goods are not of the Seller's manufacture, in which case the Buyer is entitled only to such benefit as the Seller may receive under any warranty given in respect thereof; or
  - 7.3.9. the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
  - 7.3.10. the Buyer does not register a commissioning certificate with the seller within 1 week of applying power to the Goods.
- 7.4. During the Warranty Period, clause 7.2 will apply if:
  - 7.4.1. the Buyer gives notice in writing to the Seller within a reasonable time of discovery that some or all of the Goods are defective, in that they do not comply with the Warranty;
  - 7.4.2. the Seller is given a reasonable opportunity of examining such Goods; and
  - 7.4.3. the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost.
- 7.5. Where only a part or parts of the Goods are defective, the Seller reserves the right to, at its option, repair or replace only the defective part or parts and not replace the Goods in their entirety.
- 7.6. Except as provided in this clause 7, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the Warranty.
- 7.7. The Seller has given commitments as to compliance of the Goods with relevant specifications in this clause 7, and in view of these commitments, the terms and conditions implied by sections 13 to 15 of the Sale of Goods Act 1979 and by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Order and these Conditions.

- 7.8. These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.
- 7.9. All labour, fitting and carriage costs incurred in replacement under the Warranty for refrigeration only Goods will be borne by the Buyer .
- 7.10. All labour, fitting and carriage costs incurred in replacement under the Warranty for Goods other than refrigeration only Goods will be borne by the Seller for the first 12 months of the Warranty Period and by the Buyer thereafter.

## 8. Liability

- 8.1. Nothing in these Conditions shall limit or exclude the Seller's liability for:
  - 8.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 8.1.2. fraud or fraudulent misrepresentation;
  - 8.1.3. 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);
  - 8.1.4. defective products under the Consumer Protection Act 1987; or
  - 8.1.5. any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 8.2. Subject to clause 8.1:
  - 8.2.1. the Seller shall under no circumstances whatsoever be liable to the Buyer whether pursuant to an indemnity or otherwise and whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill or any indirect or consequential loss arising under or in connection with the Order and/or these Conditions; and
  - 8.2.2. the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Order and/or these Conditions, whether pursuant to an indemnity or otherwise and whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price received by the Seller from the Buyer as payment for the Goods and/or Services under the relevant Order.
- 8.3. The Seller has given commitments as to compliance of the Goods and Services with relevant specifications in clause 7.1. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Order and these Conditions.
- 8.4. This clause shall survive termination of the Order and/or these Conditions.

## 9. Force Majeure

- 9.1. Neither party shall be in breach of these Conditions nor liable for delay in performing or failure to perform any of its obligations under the Conditions if such delay or failure results from events, circumstances or causes beyond its reasonable control, including but not limited to government intervention, official strikes, acts of God, natural disasters, fire or flood (a "**Force Majeure Event**"). The time for performance of such obligations shall be extended accordingly. If such delay in performing or failure to perform continues for more than 10 (ten) Business Days, the non-defaulting party may terminate the Conditions and / or any Order thereunder.

## 10. Price

- 10.1. 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 Seller's published price list in force at the date of acceptance of the Order (the "**Price**").
- 10.2. The Seller shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Seller engages in connection with the Services (including but not limited to travelling expenses, hotel costs, subsistence and any associated expenses) and for the cost of any materials.
- 10.3. The Seller may, by giving notice to the Buyer at any time up to 14 (fourteen) Business Days before delivery, increase the Price to reflect any increase in the costs of the Goods and/or Services that is due to any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs).
- 10.4. The Seller may, by giving notice to the Buyer at any time up to delivery, increase the Price to reflect any increase in the costs of the Goods and/or Services that is due to:
  - 10.4.1. any request by the Buyer to change the Delivery Date(s), quantities or types of Goods and/or Services ordered, or the Specification; or
  - 10.4.2. any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 10.5. The Seller reserves the right to increase the charges for the Services on an annual basis with effect from each anniversary of the date of the Order in line with the percentage increase in the Retail Prices Index in the preceding 12-month period.
- 10.6. Subject to clause 10.7, the Price is exclusive of the costs and charges of packaging, insurance and transport of the Goods which shall be payable by the Buyer.
- 10.7. Where the parties agree in writing that the price will include transport costs, the Seller shall invoice the Buyer separately for any transport costs over and above reasonable transport costs.
- 10.8. The Buyer acknowledges and accepts that where the Buyer suffers an Insolvency Situation, the Seller reserves the right to cancel any discounts of the Price previously offered to the Buyer, whether such discount is set out in the Order or elsewhere.



## 11. Payments

- 11.1. The Seller shall invoice the Buyer for the Goods on or at any time after delivery unless otherwise agreed between the parties.
- 11.2. The Buyer shall pay the invoice in full and cleared funds within 30 (thirty) days of the date of invoice, unless otherwise agreed in writing between the parties. Payment shall be made in full and in clear funds to the bank account nominated in writing by the Seller.
- 11.3. Time of payment is of the essence.
- 11.4. All amounts payable by the Buyer under the Order and these Conditions 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 Order and these Conditions by the Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.
- 11.5. If the Buyer fails to make any payment due to the Seller under the Order and/or these Conditions by the due date for payment then, without limiting the Seller’s remedies under clause 12, any discount, special offer or other price reduction that was offered by the Seller to the Buyer shall be withdrawn and, where relevant, the Seller shall invoice the Buyer for the amount outstanding as a result of the withdrawal of the discount, special offer or other price reduction (as applicable). The Buyer shall also pay interest on the overdue amount at the rate set in the Late Payment of Commercial Debts (Interest) Act 1998. 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 Buyer shall pay the interest together with the overdue amount.
- 11.6. Where payment in relation to one Order is overdue, all sums due from the Buyer to the Seller under any Order shall become immediately payable, regardless of any previously agreed terms. Where payment by instalments has been agreed between the parties and the Buyer fails to pay one instalment, all instalments shall automatically become immediately payable.
- 11.7. The Buyer shall not be entitled to:
  - 11.7.1. suspend payments due to the Seller;
  - 11.7.2. set off any amounts due from the Buyer to the Seller against any amounts due from the Seller to the Buyer; or
  - 11.7.3. make any advance payments to the Seller, without prior written consent of the Seller.
- 11.8. The Seller shall be entitled to set off any amounts due from the Seller to the Buyer against any amounts due from the Buyer to the Seller, irrespective of whether such amount due from the Seller is present or future, liquidated or unliquidated and whether or not it arises under these Conditions.
- 11.9. The Seller shall submit the invoice denominated in Pounds Sterling, and the Buyer shall pay the invoice in Pounds Sterling unless otherwise agreed in writing between the parties.

## 12. Termination

- 12.1. Where the Buyer fails to comply with any of its obligations under the Order or these Conditions (including a failure to make payment on the due date), without affecting any other right or remedy available to it, the Seller shall be entitled to cancel the Order and any other orders placed by the Buyer, including those for which payment has already been received. The cancellation shall take effect within 5 (five) Business Days of notification by the Seller (such notification being sent by recorded delivery) to the Buyer of the cancellation. In the case of such cancellation, the Buyer shall immediately return the Goods in its possession for which title has not yet passed, at its own risk and expense to the Seller.
- 12.2. If the Buyer becomes subject to any of the events listed in clause 12.3, or the Seller reasonably believes that the Buyer is about to become subject to any of them, without affecting any other right or remedy available to it, the Seller may terminate the Order with immediate effect by giving written notice to the Buyer. On such termination, the provisions of clause 12.1 and clauses 12.4 to 12.6 shall apply.
- 12.3. For the purposes of clause 12.2, the relevant events are:
  - 12.3.1. the Buyer suffers an Insolvency Situation;
  - 12.3.2. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - 12.3.3. the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Order and/or the Conditions has been placed in jeopardy;
  - 12.3.4. (being an individual) the Buyer 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; or
  - 12.3.5. (being a company or firm) the Buyer is wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring).
- 12.4. On termination of the Order:
  - 12.4.1. the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
  - 12.4.2. the Buyer shall return all of the Seller Materials and any Goods which have not been fully paid for. If the Buyer fails to do so, then the Seller may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safekeeping and will not use them for any purpose not connected with the Order.
- 12.5. Termination of the Order shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Order or these Conditions which existed at or before the date of termination.

12.6. Any provision of the Order or these Conditions that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

### 13. Intellectual Property Rights

- 13.1. All Intellectual Property Rights in or in connection with, or arising out of, the Goods and/or Services (other than Intellectual Property Rights in any materials provided by the Buyer) shall be owned by the Seller.
- 13.2. The Seller grants to the Buyer, or shall procure the direct grant to the Buyer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to copy (but not modify) the output of the Services during the term of the Order (excluding materials provided by the Buyer) for the purpose of receiving and using the Services and such output in its business. The Buyer shall not sub-license, assign or otherwise transfer the rights granted by this clause.
- 13.3. The Buyer grants the Seller a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Buyer to the Seller for the term of the Order for the purpose of providing the Goods and/or Services to the Buyer.
- 13.4. The Buyer grants the Seller a fully paid-up, exclusive, royalty-free, perpetual, non-transferable licence to access, obtain, use, copy, analyse and/or modify any technical or performance related data or information that can be obtained from the Goods during the life of the Goods for any purpose related to the provision of goods and/or services by the Seller (including, but not limited to, predictive maintenance or research and development or furthering technological progression and advances or other similar purposes). The Buyer shall not do or omit to do anything with the effect or objective of prohibiting or adversely affecting the operation of this clause 13.4.

### 14. Confidentiality

- 14.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 14.2.
- 14.2. Each party may disclose the other party's confidential information:
- 14.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Order and/or Conditions. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
- 14.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Order and/or Conditions.

### 15. Anti-Bribery

- 15.1. Both parties shall procure that any persons associated with them shall comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

### 16. Data Protection

- 16.1. The following definitions apply in this clause:
- Controller, Processor, Personal Data, Data Subject, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
- Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
- 16.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 16.3. The parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Seller is the Processor.
- 16.4. Without prejudice to the generality of clause 16.2, the Buyer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Seller for the duration and purposes of the Order and/or the Conditions.
- 16.5. Without prejudice to the generality of clause 16.2, the Seller shall in relation to any Personal Data processed in connection with the performance by the Seller of its obligations under the Order and/or the Conditions:
- 16.5.1. process that Personal Data only on the written instructions of the Buyer unless the Seller is required by Domestic Law to otherwise process that Personal Data. Where the Seller is relying on Domestic Law as the basis for processing Personal Data, the Seller shall promptly notify the Buyer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Seller from so notifying the Buyer;
- 16.5.2. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
- 16.5.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 16.5.4. not transfer any Personal Data outside of the UK unless the prior written consent of the Buyer has been obtained;

- 16.5.5. assist the Buyer, at the Buyer's cost, in responding to any request from a Data Subject, supervisory authority or regulator; and
- 16.5.6. notify the Buyer without undue delay on becoming aware of a Personal Data Breach;
- 16.5.7. at the written direction of the Buyer, delete or return Personal Data and copies thereof to the Buyer on termination of the agreement Order unless required by Domestic Law to store the Personal Data.; and
- 16.5.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 16.

## **17. Assignment and other dealings**

- 17.1. The Seller 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 Order and/or the Conditions.
- 17.2. The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all its rights or obligations under the Order and/or the Conditions without the prior written consent of the Seller.

## **18. Notices**

- 18.1. Any notice or other communication given to a party under or in connection with the Order and/or the Conditions 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, sent by pre-paid first class post or other next working day delivery service, commercial courier or e-mail.
- 18.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.1; 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 e-mail, one Business Day after transmission.
- 18.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## **19. Severance**

- 19.1. If any provision or part-provision of the Order and/or the Conditions 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 Order and/or the conditions.
- 19.2. If any provision or part-provision of the Order and/or the Conditions is invalid, illegal or unenforceable and deemed deleted, the parties shall negotiate in good faith to replace such provision so that, as replaced, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **20. Waiver**

- 20.1. A waiver of any right or remedy under the Order and/or the Conditions 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 Order and/or the Conditions 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.

## **21. Third party rights**

- 21.1. A person who is not a party to the Order and/or the Conditions shall not have any rights to enforce its terms under the Contracts (Rights of Third Parties) Act 1999.

## **22. Variation**

- 22.1. Except as set out in these Conditions, no variation of the Order and/or the Conditions, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Seller.
- 22.2. When specified or agreed materials are not readily available, the Seller shall be entitled to substitute other materials without prior notice to the Buyer.

## **23. No partnership or agency**

- 23.1. Nothing in the Order or the Conditions 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.

## **24. Entire agreement**

- 24.1. The Order and the Conditions constitute the entire agreement between the parties.
- 24.2. Each party acknowledges that in entering into the Order and the Conditions it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Order and/or the Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Order and/or the Conditions.

**25. Governing law and jurisdiction**

25.1. The Order and/or the Conditions, and any dispute or claim arising out of or in connection with them or their 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 and the parties irrevocably agree to submit to the exclusive jurisdiction of the courts of England and Wales.