

TERMS & CONDITIONS OF SALE
GSR TECHNOLOGY EUROPE LTD

The customer's attention is drawn in particular to the provisions of *clause 12*.

1 Interpretation

1.1 Definitions:

"Agreement" means the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions. The Agreement shall comprise the documents described in clause 14.3.1.

"Business Day" means a day other than a Saturday, Sunday, bank or public holiday in England.

"Conditions" means the terms and conditions set out in this document as amended from time to time in accordance with *clause 14.4*.

"Customer" means the person or firm who purchases the Goods from the Supplier.

"Expenses" means any costs incurred by the Supplier as a result of or in connection with fulfilment of the relevant Order, including:

- (i) postage, packaging, carriage, freight, and handling charges;
- (ii) insurance;
- (iii) currency conversion and banking charges applicable to the payment method used;
- (iv) value added tax or any other applicable sales tax anywhere in the world; and
- (v) any customs duties, levies, import taxes or other duties charged in respect of the sale and importation of the Goods into the country in which the Customer is resident or the delivery is made.

"Force Majeure Event" means an event or circumstance beyond a party's reasonable control.

"Goods" means the goods (or any part of them) set out in or referred to in the relevant Quotation.

"Intellectual Property Rights" means patents, rights to inventions, copyright 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.

"Minimum Quantity" means the minimum quantity of the Goods the Customer must order from the Supplier as set out in the relevant Quotation.

"Order" means the Customer's purchase order in respect of the Goods.

"Order Acknowledgement" shall have the meaning ascribed to it in clause 2.3.

"Quotation" means the Supplier's quotation in respect of the Goods, as may be amended from time to time in writing with the agreement of the Customer and the Supplier.

"Specifications" means any specification for the Goods as detailed in or referred to in the relevant Quotation.

"Supplier" means **GSR TECHNOLOGY EUROPE LTD** registered in England and Wales with company number 07037937 whose registered office is situate at 11 Froghall Drive, Wokingham, Berkshire, RG40 2LE, England.

Interpretation:

- 1.1.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.1.2 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.1.3 a reference to **writing** or **written** includes emails.
- 1.1.4 A reference to a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2 Basis of this Agreement

- 2.1 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any drawing, design or specifications provided by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order ("**Order Acknowledgment**") which shall be sent by email to the Customer's email address provided in the Order, at which point the Agreement shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer.
- 2.5 A Quotation shall not constitute an offer. A Quotation shall only be valid for a period of 30 days from its date of issue.
- 2.6 For each Order:
 - 2.6.1 the Customer may only order the Goods in multiples of the packet / carton size (if any) set out in the relevant Quotation, and the

Customer agrees that the Supplier may round the Customer's Order up to the next multiple of the relevant packet / carton size in the event that this clause is not complied with; and

- 2.6.2 the Customer must pay for the Minimum Quantity of the relevant Goods whether or not the Minimum Quantity of the relevant Goods has been ordered.

3 INCOTERMS

- 3.1 Where it is stated in the relevant Quotation that terms prepared by the International Chamber of Commerce ("**Incoterms**") shall apply, the relevant Incoterms referred to in the relevant Quotation shall apply and shall supersede any inconsistent or conflicting terms in these Conditions to the extent of such inconsistency or conflict.

4 Goods

- 4.1 The Goods shall on completion of delivery (as determined in accordance with clause 5.5) be as described in the Supplier's Order Acknowledgment and any applicable Specifications.
- 4.2 Since the Specifications originate from the Customer, the Customer:
- 4.2.1 hereby warrants and represents to the Supplier on the date of the Agreement and each day thereafter on a repeating basis that (i) the Specifications and (ii) the Supplier's use of the Specification as envisaged by this Agreement do not in each case (i) and (ii) infringe the Intellectual Property Rights of any person; and
 - 4.2.2 shall indemnify the Supplier from and against any and 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 Supplier as a result 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 and compliance with the Specifications.
- 4.3 This *clause 4.2* shall survive termination or expiry of the Agreement.
- 4.4 The Supplier reserves the right to amend the Specifications if required by any applicable statutory or regulatory requirements.

5 Delivery

- 5.1 The Supplier will have fulfilled its contractual obligations in respect of each delivery provided that the quantity actually delivered is no greater than 5% more or less than the quantity specified in the Order. The Customer shall pay for the actual quantity delivered.
- 5.2 The Customer shall take delivery of the Goods at the Supplier's place of business unless another delivery location is, without prejudice to clause 5.4, specified in the relevant Quotation ("**Delivery Point**").
- 5.3 Acceptance of any change requested by the Customer to the Delivery Point 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.

- 5.4 Subject always to clause 3:
 - 5.4.1 The Customer shall be responsible for arranging, at its cost, collection of the Goods from or delivery of the Goods to in each case the Delivery Point (as may be amended in accordance with clause 5.3), as appropriate.
 - 5.4.2 The Supplier may at its sole discretion, where requested by the Customer and where the Delivery Point is a place other than the Supplier's place of business, arrange on the Customer's behalf and at the Customer's cost and risk, transport of the Goods to the Delivery Point (as may be amended in accordance with clause 5.3). In such circumstances, the contract of carriage or freight (as appropriate) shall be between the Customer and the relevant carrier, and the Supplier shall have no responsibility or liability arising out of or in connection with such contract. Where transport is arranged under this clause 5.4.2, it shall be deemed to be a collection by the Customer and the timing of completion of delivery shall be determined in accordance with clause 5.5.
- 5.5 Delivery is completed (as appropriate):
 - 5.5.1 Where the Customer or the relevant carrier appointed by the Customer to act on its behalf (which shall, for the avoidance of doubt, include a carrier arranged under clause 5.4.2) loads the Goods at the Supplier's place of business: at the point the relevant carrier commences loading the relevant Goods at the Supplier's place of business;
 - 5.5.2 Where the Supplier loads the relevant Goods at the Supplier's place of business: on completion of loading the relevant Goods at the Supplier's place of business; or
 - 5.5.3 In accordance with the relevant applicable Incoterms, as determined by reference to the relevant Quotation.
- 5.6 Delivery or performance dates in relation to the supply of the Goods by the Supplier are approximate only and, unless otherwise expressly agreed by the Supplier in writing, time is not of the essence for delivery of the Goods.
- 5.7 Delays in the delivery of an Order shall not entitle the Customer to:
 - 5.7.1 refuse to take delivery of the Order;
 - 5.7.2 claim damages; or
 - 5.7.3 terminate this Agreement.
- 5.8 The Supplier may effect delivery in one or more instalments.
- 5.9 The Customer shall, within seven days of delivery of the relevant Goods (as determined in accordance with clause 5.5), give written notice of rejection to the Supplier on account of any defect by reason of which the Customer alleges that the Goods delivered do not comply with the Specifications and which was apparent on reasonable inspection.
- 5.10 If the Customer alleges that any Goods are defective, it shall, if so requested by the Supplier, return the relevant Goods (unaltered) to the Supplier for inspection as soon as possible and at its own risk and expense.

- 5.11 If the Customer rejects any delivery of the Goods which do not comply with the Specifications, the Supplier shall, within 10 Business Days of the Supplier accepting that the Goods do not comply with the Specifications:
- 5.11.1 supply replacement Goods which comply with the Specifications, in which event the Supplier shall be deemed not to be in breach of this Agreement or have any liability to the Customer for the rejected Goods; or
 - 5.11.2 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 Specifications.
- 5.12 If the Customer fails to give notice as specified in clause 5.9 then, except in respect of any defect which is not one which would be apparent on reasonable inspection, the Goods shall conclusively be presumed to comply with the Specifications 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 any liability that may exist for any latent defects and any claims that may exist under clause 6).
- 5.13 The Supplier's decision as to whether the Goods comply with the Specification shall be final.
- 5.14 Subject to clause 3, the Customer is responsible for obtaining, at its own cost, such import 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

- 6.1 Subject always to clauses 6.3 and 6.4, the Supplier warrants that for a period of 12 months from and including the date that delivery of the relevant Goods is completed (as determined in accordance with clause 5.5) ("**Warranty Period**") the Goods shall:
- 6.1.1 be free from material defects in materials and workmanship; and
 - 6.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and meet the quality standards specified by the Supplier.
- 6.2 Subject to *clauses 6.3 and 6.4*, if:
- 6.2.1 the Customer gives notice in writing to the Supplier 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 clause 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 Customer's cost,

the Supplier shall, at its sole discretion, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 6.3 The Supplier shall not be liable for the Goods' failure to comply with the warranties set out in *clause 6.1* in any of the following events:
- 6.3.1 the Customer makes any further use of such Goods after giving notice in accordance with *clause 6.2*;
 - 6.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 6.3.3 the defect arises as a result of the Supplier following any drawing, design or Specifications supplied by the Customer;
 - 6.3.4 any alteration or repair of the Goods by any manufacturing process or otherwise, save for any latent defect which means that the Goods did not comply with the Specifications without the written consent of the Supplier;
 - 6.3.5 the Customer's negligence, or that of its agents or employees, or any failure to follow the Supplier's instructions as to use of the Goods;
 - 6.3.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
 - 6.3.7 the Goods differ from their description contained in or referred to in the relevant Quotation, as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
 - 6.3.8 in the circumstances covered by the exclusion in *clause 6.4*.
- 6.4 In the event that the US Uniform Commercial Code is, notwithstanding the provisions of *clauses 14.3* (Entire Agreement) and *14.12* (Governing Law), held to apply to the Agreement, then the below exclusion shall apply:
- IN THE EVENT THAT GOODS ARE TO BE MADE TO THE CUSTOMER'S SPECIFICATION, THE SUPPLIER WARRANTS AS SET OUT IN CLAUSE 4.1, BUT THE SUPPLIER MAKES NO OTHER WARRANTY WHATSOEVER WITH RESPECT TO GOODS MANUFACTURED TO THE CUSTOMER'S SPECIFICATIONS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
- 6.5 Except as provided in this *clause 6*, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties set out in *clause 6.1*.
- 6.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.
- 6.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

7 Title and risk

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery (as determined in accordance with clause 5.5) or in accordance with Incoterms where relevant (as determined in accordance with clause 3).
- 7.2 Title to the Goods shall pass to the Customer on the last to occur of:
- 7.2.1 the Supplier receiving payment in full (in cash or cleared funds) for the relevant Goods in respect of which payment has become due, in which case title to such Goods shall pass at the time of payment of such sums; and
 - 7.2.2 the Supplier receiving payment in full (in cash or cleared funds) for the relevant Goods and any other goods that the Supplier has supplied to the Customer 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.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 not use the Goods or part with possession of them;
 - 7.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 7.3.3 mark the Goods as the Seller's property and not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 7.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery (as determined in accordance with clause 5.5);
 - 7.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in *clause 11.1*;
 - 7.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time; and
 - 7.3.7 on request by the Seller, permit the Seller (together with its advisors if the Supplier so elects) to enter any premises of the Customer where the Goods are stored in order to check that the provisions of this clause 7.3 have been complied with.
- 7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in *clause 11.1*, then, without limiting any other right or remedy the Supplier may have the Supplier may at any time:
- 7.4.1 require the Customer to deliver up all Goods in its possession; and
 - 7.4.2 if the Customer fails to do so promptly, enter (together with its advisors if the Supplier so elects) any premises of the Customer or (notwithstanding clauses 7.3.1 and 7.3.3) of any third party where the Goods are stored in order to recover them.

- 7.5 The Customer hereby warrants and represents to the Supplier that it has and shall maintain the necessary rights and permissions (including any required third party permissions):
- 7.5.1 Required to enable it to lawfully grant the access described in clauses 7.3.7 and 7.4.2; and
 - 7.5.2 To enable the Supplier and its advisors to lawfully exercise the access rights described in clauses 7.3.7 and 7.4.2.

8 Price and payment

- 8.1 Subject to clause 8.2, the price of the Goods shall be the price set out in the relevant Quotation (as may have been varied in writing by the Supplier after issue). The exchange rates (if any) applicable to an Order shall be those stated in the relevant Quotation.
- 8.2 The Supplier may, by giving notice to the Customer at any time increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 8.2.1 any factor beyond the Supplier's control (including border controls, foreign exchange fluctuations, increases in taxes, customs duties and levies charged in respect of the sale and importation of the Goods into the country in which the Customer is resident or to which the relevant delivery is to be made) and increases in labour, materials and other manufacturing costs);
 - 8.2.2 any request by the Customer to change the delivery date(s), quantities, the types of Goods ordered or the Specifications;
 - 8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 8.3 The price of the Goods excludes all Expenses which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid invoice.
- 8.4 The Supplier may invoice the Customer for the Goods and any costs in respect of carriage and any Expenses payable by the Customer on or at any time following acceptance of the Customer's Order for the Goods. The Customer shall pay the invoice in full within 30 days of the date of the invoice date or in accordance with such credit period as may be assigned to the Customer from time to time, in each case subject always to clause 8.7.
- 8.5 The Customer shall pay to the Supplier the total amount of each invoice in the currency specified in the relevant Quotation by telegraphic transfer to the bank account specified from time to time by the Supplier in writing in accordance with the relevant payment terms (as determined pursuant to clause 8.4), notwithstanding that delivery may not have taken place and that property in the Goods has not passed to the Customer.
- 8.6 The time for payment shall be of the essence and no payment shall be deemed to have been made until the Supplier has received payment in cleared funds.

- 8.7 The Supplier may review any credit period assigned to the Customer from time to time. The Supplier shall be entitled to revise the same as it may at its absolute discretion decide (including removal altogether forthwith). If:
- 8.7.1 The credit period assigned to the Customer is removed at any such review, the Supplier shall notify the Customer accordingly and such removal shall apply:
 - 8.7.1.1 with effect from deemed receipt of such notice in accordance with clause 14.7 (Notices) and;
 - 8.7.1.2 to any and all invoices issued to the Customer by the Supplier which are outstanding as at the date of deemed receipt of such notice (provided that interest for late payment may only be charged with effect from the date of deemed receipt of the Supplier's notice to the Customer that the credit period is removed), as well as to any invoices issued by the Supplier to the Customer from and including the date of deemed receipt of such notice.
 - 8.7.2 The credit period assigned to the Customer is decreased (but is not removed entirely pursuant to clause 8.7.1 at any such review), any such decreased credit period shall apply to any and all invoices issued to the Customer by the Supplier with effect from the date of the relevant review.
 - 8.7.3 The credit period assigned to the Customer is increased at any such review, any such revised credit period shall apply to any invoices issued by the Supplier to the Customer from and including the date of such review or such later date as the Supplier may decide.
- 8.8 The Supplier may review the credit limit assigned to the Customer from time to time. The Supplier shall be entitled to revise the same as it may at its absolute discretion decide (including removal altogether). Any such revised credit limit shall apply in respect of orders that the Customer wishes to place following the date of the relevant review.
- 8.9 All amounts of money referred to in this Agreement shall be interpreted as being amounts exclusive of any Expenses. Any such Expenses payable in relation to any such amounts shall be paid in addition to those amounts.
- 8.10 If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to the Supplier, the Customer shall increase the sum it pays to the Supplier by the amount necessary to leave the Supplier with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
- 8.11 All amounts due to the Supplier under this Agreement shall become due immediately if this Agreement is terminated or novated despite any other provision.
- 8.12 If the Customer fails to make any payment due to the Supplier under the Agreement by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.13 The Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any

other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9 Intellectual Property Rights

- 9.1 The Customer acknowledges that:
- 9.1.1 the Intellectual Property Rights in and associated with (i) the Goods (including any derivative works comprised therein) and (ii) all materials created by or on behalf of the Supplier in relation to the Goods (including drawings, designs and improvements made to the Customer's drawings or designs, whether or not patentable or capable of registration, and whether or not recorded in any medium and including in each case derivative works) whether before on or after the date of the Agreement are in each case (i) and (ii) the Supplier's (or its licensor's) sole property, and the Customer hereby acknowledges and agrees that it shall acquire no rights in the same;
 - 9.1.2 nothing in this Agreement shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights of the Supplier (or its licensors).
 - 9.1.3 the Supplier asserts its full rights to control the use of its trade marks within the EEA and the Customer shall assist the Supplier as required in preventing parallel importers from diluting the Supplier's rights;
 - 9.1.4 the Supplier asserts its full rights to control the use of its trade marks worldwide; and
 - 9.1.5 any reputation in any trade marks affixed or applied to the Goods shall accrue to the sole benefit of the Supplier or any other owner of the trade marks from time to time.
- 9.2 The Customer shall not remove any proprietary legends or identification from the Goods save for any removal which is a necessary result of a manufacturing process which the Supplier has previously agreed in writing.
- 9.3 The Customer shall not use (other than pursuant to this Agreement) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which the Supplier or any associated company of Supplier owns or claims rights in anywhere in the world.
- 9.4 The Customer shall promptly and fully notify the Supplier of:
- 9.4.1 any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Customer's notice; and
 - 9.4.2 any claim by any third party that comes to the Customer's notice that the sale or advertisement of the Goods infringes the rights of any person.
- 9.5 The Customer agrees (at the Supplier's request and at no cost to the Supplier) 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 clause 9.4.

10 Indemnity

- 10.1 The Customer shall indemnify on demand the Supplier against all costs, expenses, liabilities, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses, including costs related to the enforcement of this Agreement which are suffered and/or incurred by the Supplier arising out of or in connection with (i) the Customer's breach of or failure to fully comply with its obligations as set out in clauses 7.5, 8.4 and 8.5 and / or (ii) the Supplier's enforcement of this Agreement.

11 Termination

- 11.1 Without limiting its other rights or remedies, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer if:
- 11.1.1 the Customer commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;
 - 11.1.2 the Customer fails to pay any sums when due;
 - 11.1.3 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 11.1.4 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 11.1.5 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 11.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Agreement or any other agreement between the Customer and the Supplier if the Customer becomes subject to any of the events listed in *clause 11.1.1 to clause 11.1.5*, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Agreement on the due date for payment.
- 11.3 Without limiting its other rights or remedies, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Agreement on the due date for payment.
- 11.4 On termination of the Agreement for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 11.5 Termination of the Agreement shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Agreement that existed at or before the date of termination.

- 11.6 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 11.7 Without affecting any other right or remedy available to it, the Supplier may without liability to the Customer terminate this Agreement for convenience on giving not less than 60 (sixty) days' written notice to the Customer.

12 Limitation of liability

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
 - 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 12.1.2 fraud or fraudulent misrepresentation;
 - 12.1.3 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 12.2 Subject to *clause 12.1*, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, under an indemnity or otherwise for:
 - 12.2.1 Any indirect, special or consequential loss or damage; or
 - 12.2.2 Loss of data or other equipment or property; or
 - 12.2.3 Economic loss or damage; or
 - 12.2.4 Incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
 - 12.2.5 Any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill,even if the Supplier is advised in advance of the possibility of any such losses or damages.
- 12.3 The Supplier is not liable for:
 - 12.3.1 non-delivery, unless the Customer notifies the Supplier of the claim within 7 days of the date of the Supplier's invoice; or
 - 12.3.2 shortages in the quantity of Goods delivered in excess of those permitted by clause 5.1, unless the Customer notifies the Supplier of a claim within 7 days of receipt of the Goods; or
 - 12.3.3 damage to or loss of all or part of the Goods in transit, where the Goods are carried by the Supplier's own transport or by a carrier the Supplier engaged on behalf of the Customer.
- 12.4 Subject always to clauses 12.1 – 12.3 inclusive, the Supplier's maximum aggregate liability to the Customer in respect of all losses arising out of or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, under an indemnity or otherwise, shall be limited to 100% of the price paid or payable for the Goods (for the avoidance of doubt specifically

excluding any (i) delivery / freight charges and (ii) any taxes, duties and levies paid or payable in each case (i) and (ii) in respect of the Goods).

13 Force majeure

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform any of its obligations under this Agreement if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 30 consecutive days or more, the party not affected may terminate this Agreement by giving written notice to the affected party.

14 General

14.1 Assignment and other dealings.

14.1.1 The Supplier 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 Agreement.

14.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement without the prior written consent of the Supplier, such consent not to be unreasonably delayed or withheld.

14.2 Confidentiality.

14.2.1 Without prejudice to clause 9 (Intellectual Property Rights), each party undertakes that it shall not from the date of disclosure and for a period of two years after the first to occur of (i) termination of this Agreement and (ii) completion of delivery of the relevant Goods as determined in accordance with clause 5.5, disclose to any person any confidential information concerning the business, affairs, Specifications, pricing, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, their Intellectual Property Rights and market opportunities except as permitted by *clause 14.2.2*. For the purposes of this clause, "**group**" means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

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

14.2.2.1 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 this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this *clause 14.2*; and

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

14.2.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

14.3 **Entire agreement.**

14.3.1 Subject always to clause 2.1 and 2.4, these Conditions, the relevant Quotation, the relevant Order, and the relevant Order acknowledgment issued by the Supplier constitute the entire agreement between the parties in relation to its subject matter and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.3.2 In the event of a conflict or inconsistency between these Conditions, the relevant Quotation, the relevant Order, or the relevant Order acknowledgment issued by the Supplier, the documents shall (subject always to these Conditions, including clauses 2.1 and 2.4) prevail in the following order:

14.3.2.1 the relevant Order acknowledgement issued by the Supplier;

14.3.2.2 the relevant Quotation;

14.3.2.3 these Conditions;

14.3.2.4 the Order.

14.3.3 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

14.4 **Variation.** No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Agreement 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.

14.6 **Severance.** If any provision or part-provision of the Agreement 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 Agreement.

14.7 **Notices.**

14.7.1 A notice given to a party under or in connection with these Conditions shall be in writing and sent to the party in accordance with this clause 14.7.

14.7.2 A formal notice shall be delivered by hand or by pre-paid first-class post or other next working day delivery service or by airmail, in each case at its registered office (if a company) or its principal place of business (in any other case).

- 14.7.3 Any notice shall be deemed to have been received:
- 14.7.3.1 if delivered by hand, on signature of a delivery receipt;
 - 14.7.3.2 if sent by pre-paid first class post or other next working day delivery service, providing proof of postage at 9.00 am on the second Business Day after posting; or
 - 14.7.3.3 if sent by pre-paid airmail, providing proof of postage, at the time of delivery recorded by the delivery service.
- 14.7.4 For the purpose of this clause 14.7 and in calculating deemed receipt:
- 14.7.4.1 all references to time are to local time in the place of deemed receipt; and
 - 14.7.4.2 if deemed receipt would occur outside business hours (being 9.00am – 5.00pm), at 9.00 am on the next Business Day.
- 14.7.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 14.7.6 A notice given under or in connection with this Agreement is not valid if sent by email.
- 14.8 **Further assurance.** The Customer shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to the Agreement.
- 14.9 **Cumulative remedies.** The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14.10 **No partnership or agency.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 14.11 **Third party rights.** No one other than a party to this Agreement shall have any right to enforce any of its terms whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 14.12 **Governing law.** The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 14.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.