

## STANDARD TERMS AND CONDITIONS OF SALE

THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 12.

### 1. INTERPRETATION

#### 1.1 Definitions:

**Anti-Corruption Laws:** all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

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

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 17.5.

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

**Customer:** the firm who purchases the Goods from the Supplier.

**Delivery Date** means the approximate date on which the Goods are to be delivered as stipulated in the Order.

**Delivery Location** means the location set out in the Order or such other location as the parties may agree.

**Export and Sanctions Laws:** all applicable trade embargo and sanction laws and regulations, including but not limited to those issued by the UN, EU, UK, US and Organisation for Security and Cooperation in Europe.

**Force Majeure Event:** any act, event or circumstance beyond the Supplier's reasonable control preventing or delaying it from performing its obligations under the Contract.

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

**Incoterms:** INCOTERMS 2010 Edition published by The International Chamber of Commerce (or as amended from time to time).

**International Delivery Destinations:** all countries, save for those countries to which the Supplier is prohibited from delivering or providing Goods or services related thereto under any applicable laws or regulations, including but not limited to Export and Sanctions Laws;

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form which has been accepted in writing by the Supplier by way of an Order Acknowledgement.

**Order Acknowledgment:** the Supplier's written confirmation to the Customer of the Supplier's acceptance of the Order;

**Price** means the price for the Goods, excluding carriage, packaging, insurance, custom duties, taxes and VAT (and/or any other applicable charges of a similar kind);

**Supplier:** Hochiki Europe (U.K.) Limited (company number 02639909), a company registered in England and Wales with a registered office at 89 Spa Road, London, SE16 3SG. The Supplier's main trading address is Grosvenor Road, Gillingham Business Park, Gillingham, Kent, ME8 0SA, United Kingdom. The Supplier's VAT number is GB573818803. The Supplier operates the website <https://store.hochikieurope.com>. The Supplier's Customer Service helpline is 01634 260133. Alternatively, Customers may email the Supplier on [sales@hochikieurope.com](mailto:sales@hochikieurope.com).

## 1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted at the relevant time. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted at the relevant time.
- (b) 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.
- (c) a reference to **writing** or **written** includes emails.
- (d) a reference to a singular shall include the plural and vice versa.
- (e) the headings used in these Conditions are for convenience only and shall not affect their interpretation.
- (f) these Conditions and the Contract are made only in the English language.

## 2. Basis of contract

- 2.1 These Conditions apply to the Order 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 as far as is lawfully possible, save as otherwise specified in these Conditions.
- 2.2 The Supplier's employees and agents are not authorised to make any representations or claims concerning the Goods or the Contract unless expressly authorised to do so by a Director or the Contracts Manager of the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed in writing.
- 2.3 The Supplier's order process provides on-screen prompts to enable the Customer to place an Order. The order process further enables the Customer to check and amend any errors before submitting its Order. The Customer is responsible for ensuring that the terms of the Order submitted by the Customer are complete and accurate.

- 2.4 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Order shall only be deemed to be accepted when the Supplier (or an authorised representative of the Supplier) sends a written acceptance of the Order by way of an Order Acknowledgment, at which point the Contract shall come into existence. The Customer may withdraw its Order at any point before the Supplier's acceptance of the Order.
- 2.5 The Supplier reserves the right to request references prior to its acceptance of the Order. The Supplier is not obliged to accept any Order from any Customer who, upon request, has not supplied the Supplier with references satisfactory to the Supplier.
- 2.6 No Order which the Supplier has accepted may be cancelled by the Customer, except with the prior written agreement of a Director of the Supplier and the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of the cancellation.
- 2.7 The Supplier may in its sole discretion cancel this Contract at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice, the Supplier shall promptly repay to the Customer any sums prepaid in respect of the Price (if any). The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 2.8 Any sales literature, price list, sample, drawing, advertising or any other such document produced by the Supplier and/or any pictures or illustrations contained therein are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. These shall not constitute offers to sell the Goods which are capable of acceptance, form part of the Contract nor have any contractual force. The Supplier reserves the right to amend any such document without prior notice.
- 2.9 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 2.10 Unless the Supplier specifies otherwise in writing, a quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 90 Business Days from its date of issue or for such other time as the Supplier may specify.
- 2.11 The Customer should retain a copy of these Conditions for future reference.

### **3. Goods**

- 3.1 The specification for the Goods is set out on the Supplier's website. The Supplier may include the specification for the Goods on the Order Acknowledgment or otherwise make it available on request. The Supplier reserves the right to amend the specification of the Goods without notice to the Customer if such amendment is required by any applicable statutory or regulatory requirements. In all other cases, the Supplier shall notify the Customer of any changes to the specification of the Goods prior to delivery and where such changes are material and do not meet the Customer's requirements, the Supplier shall, subject always to clause 2.6, consider in good faith any request by the Customer to amend or cancel the Order.
- 3.2 The Supplier will only supply the Goods in the minimum units (or multiples) stated in the Supplier's price list or in boxed quantities if so specified. The Supplier reserves the right to adjust any Order received for quantities other than those set out in the Supplier's sales documentation.

### **4. U.K. Delivery**

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the Order number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 Subject to the Customer's service level requirements, the Supplier shall arrange, at the Customer's expense, for the delivery of the Goods to the Delivery Location by a carrier appointed by the Supplier. If no Delivery Location is specified, the Customer shall collect the Goods at the Supplier's premises after the Supplier has notified the Customer that the Goods are ready for collection.
- 4.3 The Supplier shall endeavour to comply with the shipping instructions given by the Customer in the Order only where the Supplier at its sole discretion considers these to be reasonably practicable. The Supplier reserves the right to make such shipping arrangements as are necessary for the delivery of the Goods.

- 4.4 Where the Customer collects the Goods at the Supplier's premises, delivery is completed on completion of the loading of the Goods. Goods delivered by post or by a carrier appointed by the Supplier will be deemed delivered when the Goods are accepted by the Post Office or carrier in the United Kingdom. For all Delivery Locations not within the United Kingdom, the terms of clause 5 shall apply.
- 4.5 Any Delivery Date quoted is approximate only, and the time for delivery or despatch is not of the essence.
- 4.6 The Supplier shall not be liable for any delay in delivery of the Goods, including any delay that is caused by a Force Majeure Event, the Customer's failure to make the Delivery Location available or provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7 If the Supplier is unable to deliver the Goods to the Customer, it shall notify the Customer in writing of the same. 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. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to make the Delivery Location available or provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.8 If the Customer fails to take delivery of the Goods or any part of them on or around the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the goods to be delivered on the Delivery Date, the Supplier shall be entitled upon giving written notice to the Customer to store or arrange for the storage of the Goods and then notwithstanding the provision of clause 7 of these Conditions, risk in the Goods shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to the Supplier all costs and expenses including storage and insurance charges arising from such failure.
- 4.9 If the Customer has not accepted delivery of the Goods:
- (a) as a result of failing to collect the Goods within 10 Business Days of being notified by the Supplier that the Goods are ready for collection; or
  - (b) within 10 Business Days of the day on which delivery was attempted by the Supplier at the Delivery Location

the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting 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.

- 4.10 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.
- 4.11 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall be treated as a separate Contract and any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment or treat the Contract as a whole as repudiated.

## **5. International Delivery**

- 5.1 The Supplier delivers to the International Delivery Destinations.
- 5.2 All Orders for International Delivery Destinations shall be subject to Incoterm FCA Gillingham, or as otherwise notified by the Supplier in writing.
- 5.3 Where the Customer requests delivery to an International Delivery Destination, subject to the Incoterm that applies to the Order, the Customer shall be liable to pay for export packaging, documentation, custom clearance, insurance and any other incidental charges in the UK and international freight. The Customer will also be liable to pay charges at destination and any additional import duties and taxes and any other fees which apply to the Goods on delivery to that destination. The Customer shall obtain and maintain all licences, clearances and other consents that are necessary for the supply of the Goods (including import licences) and shall otherwise comply with all applicable laws and regulations of the country for which the Goods are destined and into which the Goods are to be imported. The Supplier shall have no liability whatsoever where the Customer breaks any such law or regulation and the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs, damages, charges, professional fees and expenses incurred by the Supplier as a result of the Customer's failure to comply with such law or regulation.
- 5.4 When placing the Order, the Customer must advise the Supplier in writing of any special legal, administrative or regulatory requirements applying in the territory in which the Customer is to import, use or sell the Goods as to composition, labelling, distributors or sale of the Goods and the Customer must advise the Supplier of any change made in such requirements.
- 5.5 Without limiting clause 5.4, the Customer shall at its own cost provide to the Supplier, or (where local laws or regulations require the Supplier to do so) assist the Supplier in procuring, any documents necessary under applicable laws and regulations for the Supplier to export the Goods to the Delivery Location in accordance with such laws and regulations.

5.6 Deemed delivery of the Goods to an International Delivery Location shall be determined in accordance with the Incoterm which the parties have agreed applies to the Order in writing.

## **6. Quality and Warranty**

6.1 The Goods are intended for use in accordance with their product specification. The Supplier does not warrant that the Goods comply with any laws, regulations or standards other than those standards referenced in the product specification.

6.2 Subject to these Conditions, the Supplier warrants that on the Delivery Date, the Goods shall correspond with their description and be of satisfactory quality. The Supplier further warrants that for a period of 36 months from the date of manufacture (**Warranty Period**), the Goods shall be free from material defects in material and workmanship.

6.3 The Customer will arrange for testing and inspection of the Goods on delivery. The Supplier shall have no liability for any claim in respect of any defect in the Goods, save as otherwise set out in this clause 6.

6.4 The Supplier shall, at its option, repair or replace any defective Goods or refund or credit the Price of the defective Goods that do not comply with clause 6.2 provided that:

- (a) in the case of defects discoverable by a physical inspection, the Customer gives notice in writing to the Supplier no later than 90 days from the date of delivery of the Goods; or
- (b) in the case of latent defects, the Customer gives notice in writing to the Supplier during the Warranty Period and within a reasonable period of time from the date of delivery of the Goods; and
- (c) the Supplier is given a reasonable opportunity of examining such Goods; and
- (d) the Customer (if asked to do so by the Supplier in writing) returns such Goods to the Supplier's place of business at the Customer's cost or stores the Goods which are the subject of a claim separately.

6.5 The Customer shall be deemed to accept the Goods if it does not notify the Supplier of any failure of the Goods to comply with clause 6.2 within the time periods set out in clause 6.4.

6.6 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 6.4;

- (b) 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;
- (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence or negligent treatment, misuse, abnormal storage or working conditions or any other act or omission on the part of the Purchaser, its employees, agents or any third party; or
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.7 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 warranty set out in clause 6.1.

6.8 The mixing or use of the Goods is beyond the Supplier's control and accordingly, all conditions and warranties (statutory or otherwise) as to fitness of the Goods for any particular purpose are expressly excluded.

6.9 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law or otherwise are (including but not limited to the terms implied by sections 13 to 15 of the Sale of Goods Act 1979), to the fullest extent permitted by law, excluded from the Contract.

6.10 Notwithstanding anything to the contrary in these Conditions, the Supplier shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute, or under the express terms of the Contract, for any direct or consequential loss or damage sustained by the Customer (including, without limitation, loss of profit or indirect or special loss), costs, expenses and other claims for consequential compensation whatsoever (and whether caused by the negligence of the Supplier, its servants or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer.

6.11 The Customer shall ensure that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Customer is in compliance with all applicable statutory and other regulatory requirements and that the storage and handling of the Goods by the Customer is carried out in accordance with directions given by the Supplier or any competent



governmental or regulatory authority and the Customer will indemnify the Supplier against any liability, loss or damage which the Supplier might suffer as a result of the Customer's failure to comply with this condition.

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

## **7. Title and risk**

### **7.1 Risk in the Goods shall pass to the Customer:**

- (a) in the case of delivery to a Delivery Location within the United Kingdom, at the time of delivery or attempted delivery at the Delivery Location as the case may be;
- (b) where the Delivery Location is the Supplier's premises, on the date on which the Supplier notifies the Customer that the Goods are ready for collection; or
- (c) in the case of delivery to an International Delivery Destination, in accordance with the Incoterm which applies to the Order.

7.2 Unless the parties agree otherwise in writing, title to the Goods shall not pass to the Customer until the Supplier receives payment in full, including any taxes, (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due (including all applicable delivery charges), in which case title to the Goods shall pass at the time of payment of all such sums.

7.3 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the sole and absolute property of the Supplier, but if the Customer does so all money owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

7.4 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods and each of them on a fiduciary basis as Bailee for the Supplier;
- (b) store the Goods separately from all other goods held by the Customer and marked in such a way as to ensure that the Goods remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

- (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.1;
- (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time; and
- (g) on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.

7.5 Notwithstanding that the Goods (or any of them) remain the property of the Supplier, the Customer may sell or use the Goods in the ordinary course of the Customer's business at full market value for the account of the Supplier. Any such sale or dealings shall be a sale or use of the Supplier's property by the Customer on the Customer's own behalf and the Customer shall deal as principal when making such sales or dealings. Until title and the Goods passes from the Supplier, the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Supplier and shall not be mixed with other money or paid into any overdrawn bank account, and shall be at all material times identified as the Supplier's money.

The Supplier shall be entitled to recover the Price (as aforesaid) notwithstanding that the title and any of the Goods has not passed from the Supplier.

7.6 If before title to the Goods passes to the Customer the Customer becomes or is likely to become subject to any of the events listed in clause 11.1, then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
  - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
  - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 8. Price

8.1 The Price shall be the price set out in the Order. If no price is quoted on the Order, the Price shall be the price set out in the Supplier's published price list in force as at the date on which the Supplier accepted the Customer's Order.

8.2 Unless the parties agree otherwise in writing, the Price:

- (a) excludes amounts in respect of value added tax (**VAT**) or any other applicable levy of a similar kind, which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT or other such invoice;
- (b) excludes the costs and charges of transport of the Goods; and
- (c) in the case of delivery to an International Delivery Destination, but subject always to the Incoterm that applies to the Order, excludes the costs and charges of insurance.

8.3 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including but not limited to 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
- (c) any delay caused by the Customer's failure to give the Supplier adequate or accurate information or instructions.

## **9. Payment**

9.1 At or any time after the Customer's successful registration on the Supplier's website, the Supplier shall at its sole and absolute discretion determine the payment methods available to the Customer.

9.2 In deciding which payment methods to make available to the Customer, the Supplier may take into account any factor it considers fit, including but not limited to, the Customer's credit references.

9.3 The payment method allocated to the Customer by the Supplier shall be one, or all, or a combination of the following:

- (a) **Credit**
  - (i) The Supplier may allocate to the Customer a credit account which enables the Customer to purchase the Goods on credit.
  - (ii) Where the Customer places an Order on credit, the Supplier shall issue an invoice to the Customer for the total sum due for the Goods.
  - (iii) All invoices are payable within 30 days of the date of each invoice or such other date as may be specified on the invoice, unless the parties agree otherwise in writing.

- (iv) The Supplier may from time to time set and vary credit limits and withhold all further supplies if the Customer exceeds such credit limit.
- (v) The Supplier may, at its absolute discretion, withdraw the credit account and require the Customer to pay the Supplier in respect of the Goods already shipped and require advance payment in respect of any further Orders. In such a case, notwithstanding any payment terms contained in the Contract, all amounts due and owed by the Customer to the Supplier shall be immediately payable by the Customer.

(b) **Card**

The Supplier may require the Customer to pay some or all of the Price by debit or credit card prior to or at the time of placing the Order.

(c) **BACS transfer**

The Supplier may require the Customer to pay some or all of the Price by BACS transfer to the Supplier's bank or building society account, details of which the Supplier will make available to the Customer prior to or at the time of placing the Order.

9.4 The Customer shall pay the Price in full and in cleared funds using the payment method available to the Customer and by the applicable payment date specified in clause 9.3, notwithstanding that delivery may not have taken place and/or that the title in the Goods has not passed to the Customer. Payment shall be made to the bank account nominated in writing by the Supplier and in the currency stated on the invoice or acceptance form. Time for payment is of the essence. The Supplier will issue a receipt for payment only on request.

9.5 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction, credit 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.

9.6 The Customer undertakes not to offer the Goods for resale in any country notified by the Supplier to the Customer at or before the time the Order is placed and/or a Contract is entered into, or to sell the Goods to any person if the Customer knows or has reason to believe that that person intends to resell the Goods in any such country.

**10. Return of Goods**

10.1 The Supplier shall be under no obligation whatsoever to accept the return of any Goods for any reason.

- 10.2 Subject to clause 10.1, if the Customer wishes to return any undamaged Goods in their original packaging to the Supplier for any reason other than those set out at clause 6.4 in return for a full refund of the Price of the Goods being returned, the Customer shall make such request to the Supplier in writing no later than three months from the date of the Order. Such written request must contain the Order number, the reason for the request and such further information as the Supplier may require.
- 10.3 If the Supplier accepts in writing the Customer's request to return the Goods, the Customer must return the undamaged Goods in their original unopened packaging to the Supplier at its own cost within 10 Business Days of the Supplier's acceptance of the request.
- 10.4 The Supplier reserves the right to reject any Goods which are damaged or which the Supplier reasonably believes are not fit for resale. The Supplier may also, in its absolute discretion and as a condition of accepting the returned Goods, require the Customer to pay a restocking fee in respect of any Goods being returned. The restocking fee shall be 25% of the Price of the Goods being returned.

## **11. Termination and Remedies**

- 11.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
  - (b) 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;
  - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - (d) 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 Contract has been placed in jeopardy; or
  - (e) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 11.1(a) to clause 11.1(d).
- 11.2 Without limiting its other rights or remedies, the Supplier may cancel the Order or suspend the provision of the Goods under the Contract or any other contract between the Customer

and the Supplier if the Customer becomes subject to any of the events listed in clause 11.1(a) to clause 11.1(d), 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 Contract on the due date for payment.

- 11.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract 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.
- 11.4 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment then, without limiting its other rights or remedies, the Supplier shall be entitled to cancel the Order or suspend any further deliveries to the Customer, and/or charge the Customer interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment (a part of a month being treated as a full month for the purpose of calculating interest). The Customer shall pay the interest together with the overdue amount.
- 11.5 Without limiting its other rights or remedies, where the Price is payable in a currency other than Sterling and the Customer fails to pay any amount due under the Contract on the payment due date, the Supplier may charge the Customer for any reduction in the value of the Sterling as at the actual payment date arising from a variation in the relevant exchange rate. Such reduction shall be determined by the Supplier's bank following a comparison of the exchange rate as at the date on which the amount fell due under the Contract and the date of actual payment.
- 11.6 Without limiting its other rights or remedies, the Supplier reserves the right to apply a general lien over all of the Goods for which the Customer has paid but which are in the Supplier's possession until the Supplier receives full payment from the Customer.
- 11.7 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest (notwithstanding any previous agreement or arrangement to the contrary).
- 11.8 Termination of the Contract 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 Contract that existed at or before the date of termination.
- 11.9 Any provision of the Contract 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.

## 12. Limitation of liability

### THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 12.1 This clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) for:
- (a) any breach of this Contract however arising; and
  - (b) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Contract.
- 12.2 Subject to clause 12.3, in relation to any liability of the Supplier which may arise under clause 12.1, the remedies of the Customer shall be limited to damages.
- 12.3 Notwithstanding clause 6.4, the Customer's sole recourse for faulty Goods shall be the replacement of the affected Goods.
- 12.4 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (d) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 12.5 Subject to clause 12.3, the Supplier is not liable under or in connection with these Conditions, whether in tort (including negligence), contract or in any other manner for any delay in delivering the Goods or any variance in the quantity of the Goods from that specified in the Order.
- 12.6 Subject to clause 12.3:
- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profits, sales, business or revenue, goodwill, business opportunity or any indirect or consequential loss arising under or in connection with the Contract; and
  - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

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

### **13. Force majeure**

13.1 The Supplier shall not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly.

13.2 If the period of delay or non-performance continues for 6 weeks, the Supplier may terminate this Contract by giving 14 days' written notice to the Customer.

### **14. Sanctions, Export Regulations and Anti-Bribery Compliance**

14.1 The Supplier abides by Export and Sanctions Laws and as such, the Supplier is not permitted to sell certain manufactured products to embargoed countries, or to certain listed entities whether directly or via any third party country.

14.2 The Customer agrees to comply fully with all Export and Sanctions Laws and undertakes not to re-export or transfer Goods to any destination subject to an embargo imposed under Export and Sanctions Laws. By accepting these Conditions, the Customer further represents and warrants that it is not listed on any sanctions related list of prohibited or restricted persons, entities or bodies.

14.3 The Customer shall comply with the Anti-Corruption Laws. In particular, the Customer agrees that it has not improperly given, offered, received or agreed to accept any payment, gift, or other advantage which violates Anti-Corruption Laws.

### **15. WEEE (Waste Electrical and Electronic Equipment)**

15.1 The Supplier is a registered Producer under the UK WEEE Regulations WEE/ED2077RV. The Supplier upon the sale of all EEE transfers the financial obligations for removal, collection, recovery and recycling of the new EEE once it becomes waste and any replaced WEEE to the final user.

### **16. Uniform Laws**

16.1 The Uniform Laws on the International Sale of Goods laid down in the 1980 United Nations Convention shall not apply unless expressly agreed between the parties in writing.



## 17. General

### 17.1 Assignment and other dealings.

- (a) 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 Contract.
- (b) 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 Contract without the prior written consent of the Supplier.

### 17.2 Confidentiality.

- (a) The Customer undertakes that it shall not at any time, without the Supplier's prior written consent, disclose to any person any confidential information concerning the business, affairs, products, customers, clients or suppliers of the Supplier or of any member of the group to which the Supplier belongs, except as permitted by clause 17.2(b). For the purposes of this clause, **group** means, in relation to the Supplier, the Supplier, any subsidiary or holding company from time to time of the Supplier, and any subsidiary from time to time of a holding company of the Supplier.
- (b) The Customer may disclose the Supplier's confidential information:
  - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Customer's rights or carrying out its obligations under or in connection with this agreement. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses the Supplier's confidential information comply with this clause 17.2; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) The Customer shall not use the Supplier's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- (d) Nothing under this clause 17.2 shall prevent the Customer from disclosing information which is already in the public domain other than by reason of the Customer's fault.
- (e) For the avoidance of doubt, this clause 17.2 shall survive the termination of the Contract.

### 17.3 Intellectual Property.

- (a) The Customer undertakes that it shall not at any time use, authorise or permit any other person to use any name, trade mark, house mark, emblem, symbol or other intellectual property of the Company or which the Company is licensed to use, unless the Customer has obtained prior written consent from the Company (and, where appropriate, its licensor).

**17.4 Entire agreement.**

- (a) Unless otherwise confirmed in writing by an authorised representative of the Supplier, this 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.
- (b) 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 or negligent misstatement based on any statement in this agreement.

**17.5 Variation.** The Supplier reserves the right to amend these Conditions from time to time.

**17.6 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

**17.8 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17.9 **Third party rights.** The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract. No one other than a party to this Contract shall have any right to enforce any of its terms.

17.10 **Governing law.** The Contract, 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.

17.11 **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 Contract or its subject matter or formation.