

## 1. INTERPRETATION

1.1. In these terms and conditions of sale (“**Conditions**”), save where the context requires otherwise:

“Business Day” means any day other than a Saturday, Sunday or a day which is a public or bank holiday in England and Wales;

“Buyer” means the person with whom the Company is contracting;

“Company” means Applied Photophysics Limited;

“Contract” means the contract for the sale and purchase of Goods and/or Services between the Company and the Buyer as may be further evidenced by the Company’s final written offer, quotation, or order acknowledgement;

“Goods” means the goods sold or to be sold by the Company to Buyer;

“Incoterms 2010” means the terms as defined in the International Chamber of Commerce’s Incoterms® 2010 (save as expressly or impliedly varied by these Conditions);

“Licence Agreement” means the current form of the Company’s licence agreement under which the Company grants Buyer a non-exclusive right and licence to use the Company’s software for the operation of the Goods;

“Services” means the services supplied or to be supplied by the Company to Buyer;

“Software” means any firmware, software or data compilations (i) identified in the Contract or (ii) provided to Buyer by the Company in connection with installation or operation of the Goods. For the avoidance of doubt, Software shall not include any "open source" firmware, software or data compilations, as any such "open source" firmware, software or data compilations will be subject to the terms and conditions set out in the relevant "open source" license;

“United Kingdom” means the United Kingdom of Great Britain and Northern Ireland; and

“Value Added Tax” means any tax introduced pursuant to any directive of The Council of the European Community relating to turnover taxes including value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto and any similar tax replacing or introduced in addition to the same.

1.2. Headings are for ease of reference only and shall not affect construction.

1.3. Words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, and words importing whole shall be treated as including a reference to any part thereof.

## 2. GENERAL

2.1. These Conditions shall apply to all quotations given or contracts made or agreed to be made by the Company for the supply of the Goods or the Services or both. Any conditions submitted, proposed or stipulated by Buyer in whatever form and at whatever time, whether written or oral, and any conditions which are implied by trade, custom, practice, or course of dealing are expressly waived and excluded.

- 2.2. No change to these Conditions shall be binding unless agreed in writing by a director of the Company.
- 2.3. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is expressly specified.

**3. ORDERS**

- 3.1. No order sent by Buyer shall be binding upon the Company until it has been expressly confirmed in writing by the Company, at which point the contract between Buyer and the Company shall come into existence.
- 3.2. The Company shall be under no obligation to:
  - 3.2.1. confirm any order sent by Buyer to the Company; and
  - 3.2.2. prefer Buyer as against any other person with whom the Company may contract for the sale of any goods offered for sale by the Company.

**4. PRICE**

- 4.1. The price of the Goods or Services shall unless otherwise stated by the Company in writing be:
  - 4.1.1. the price stated by the Company in the contract; or
  - 4.1.2. if no price is stated in the contract, the list price of the Company current at the date of delivery of the Goods or Services. In the case of an order for delivery by instalments the price payable for each instalment shall be the list price of the Company at the date of delivery of such instalment.
- 4.2. All quotations issued by the Company for the supply of Goods and Services shall remain open for acceptance for the period stated in the quotation or, if none is stated, for thirty (30) days.
- 4.3. The Company reserves the right by notice given at any time before delivery to vary the price of the Goods or the Services (or both, as applicable) if, after the date of the contract between Buyer and the Company, there is an increase in the cost of the Goods or the Services (or both, as applicable) to the Company by reason of any circumstance outside the control of the Company including (without limitation) increases in the cost of materials, labour or transport, exchange rate fluctuations, increases in import levies or other taxes. If the price of the Goods or the Services (or both, as applicable) is increased pursuant to this Condition 4.3, Buyer may cancel the undelivered balance of the contract by written notice to the Company served within 5 Business Days of receipt of such notice given to the Company.
- 4.4. The price of the Goods and Services is exclusive of any local import duties, value added or any other local or national taxes.
- 4.5. Unless otherwise agreed in writing by the Company the price of the Goods is exclusive of costs of packaging and delivery which must be paid at the same time as payment for the Goods.

**5. VALUE ADDED TAX**

- 5.1. Subject to Condition 5.3, an amount equal to any Value Added Tax chargeable on any supply for Value Added Tax made pursuant to these Conditions by the Company, including, without limitation, any such supply deemed to be made by the Company, shall be paid by Buyer to the Company on demand.
- 5.2. All payments to be made by Buyer to the Company under these Conditions are calculated without regard to Value Added Tax. If any such payment constitutes the whole or any part of the consideration for a taxable supply or deemed taxable supply (whether or not such supply is a taxable supply or deemed taxable supply pursuant to the exercise of any option) by the Company, the amount of that

payment shall be increased by an amount equal to the Value Added Tax chargeable on the supply in question.

- 5.3. Condition 5.1 shall not apply to any supply in respect of which a full increased payment has been made under Condition 5.2 at or before the time of supply.

## **6. PAYMENT**

- 6.1. Unless otherwise agreed in writing by the parties, payment of the invoice shall be made in full and in cleared funds within thirty (30) Business Days of the date of the invoice, in the currency invoiced. Time of payment is of the essence. Payment shall be made solely via electronic funds transfer originating from or check drawn on Buyer's account held in the country of Buyer's principal place of business.
- 6.2. If any sums become overdue, the Company may (without prejudice to any other right or remedy available to it) suspend all further deliveries until payment in full thereof has been made or (at its option) cancel the contract as regards any Goods which remain to be delivered thereunder or as regards any Services which remain to be provided thereunder.
- 6.3. Without prejudice to any right or remedy available to it, the Company may at its discretion charge interest at the rate of 8 per cent. per annum above the Bank of England's base rate from time to time on any sum not paid on the due date. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Buyer shall pay the interest together with the overdue amount.
- 6.4. Buyer shall not be entitled to withhold payment in whole or in part on the ground that it has a claim, counterclaim or set-off against the Company.

## **7. CHANGES AND RETURNS**

- 7.1. The Company reserves the right, subject to prior written notice, to make any change in the specification of the Goods, which does not materially affect the installation, performance, or price thereof,
- 7.2. Goods may only be returned with prior authorization from the Company.

## **8. DELIVERY OF THE GOODS**

- 8.1. The time for delivery shall not be of the essence and any time specified for delivery of the Goods is intended as an estimate only. The Company shall not be liable for any loss or damage whether arising directly or indirectly from delay in delivery.
- 8.2. Risk in the Goods shall pass to Buyer on delivery of the Goods to the place in the United Kingdom, the Republic of Ireland, the Channel Islands, or the Isle of Man (as applicable) specified by Buyer. After delivery, the Goods shall be at Buyer's sole risk in respect of all loss or damage arising from any cause whatsoever.
- 8.3. If delivery is delayed through Buyer's default or if Buyer declines or delays in accepting delivery, or if the delivery is delayed due to failure by the Buyer to comply with the pre-installation requirements as set down under Condition 11.1 then and in either such case the Company may (without prejudice to any other right or remedy available to it) do all or any of the following:
- 8.3.1. charge as part of the price of the Goods a reasonable storage fee and other costs incurred by the Company;
  - 8.3.2. sell the Goods for the Company's account;
  - 8.3.3. cancel the contract as regards any Goods that remain to be delivered thereunder.
- 8.4. Each delivery shall be considered as a separate contract and the failure of any delivery shall not vitiate the contract as to others.

8.5. The Company shall be entitled to suspend a delivery of the Goods or the performance of the Services (or both) otherwise due to occur following service of a notice under Condition 22.1.3 until the earlier occurrence of:

8.5.1. such breach being remedied by Buyer; or

8.5.2. the termination of the relevant contract.

## **9. EXPORT TERMS**

9.1. Where the Goods are supplied for export from the United Kingdom, then unless otherwise agreed in writing between the Company and Buyer:

9.1.1. delivery of the Goods is subject to the granting of all necessary export licences (where applicable);

9.1.2. the order shall be fulfilled in accordance with the Incoterms 2010 term specified in the Company's written confirmation of that order, save that if there is any conflict between the provisions of the Incoterms and these Conditions the latter shall prevail;

9.1.3. Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties and taxes thereon; and

9.1.4. Buyer shall be deemed to have satisfied itself that such Goods comply with the safety regulations of any country or state in which the Goods are to be used outside the United Kingdom and Buyer shall indemnify and keep indemnified the Company in full for any loss or damage whatsoever which the Company may incur if such Goods do not comply with any such safety regulations.

9.2. The Company shall not be liable for any loss or damage whether arising directly or indirectly from delay in obtaining necessary export licences.

## **10. INSTALMENTS**

10.1. The Company may deliver the Goods or the Services by instalments and may invoice Buyer for each such instalment. Each instalment shall be treated as a separate contract so that failure to deliver or defect in one or more instalments shall not entitle Buyer to reject the other instalments.

10.2. If the Goods or the Services are to be delivered by instalments, the Company shall be entitled to invoice each instalment as and when delivery of such instalment has been made and payment for all delivered instalments shall be due notwithstanding the non-delivery of other instalments or other default by the Company. Failure by Buyer to make payment by the due date for any one instalment for whatever reason shall entitle the Company to suspend deliveries of Goods or provision of Services under the Contract but without prejudice to any other right the Company may have under any of the other provisions of these Conditions

## **11. INSTALLATION AND ACCEPTANCE**

11.1. Where the Goods require installation, the Buyer shall, at its own cost, be responsible for preparing and maintaining the installation site in accordance with the Company's pre-installation requirements (such as specifications for power quality/grounding, temperature and/or humidity) and other instructions provided by the Company. Installation will not begin unless such responsibilities are completed.

11.2. Following installation, and where applicable, the Company will proceed with final testing using its standard instruments and procedures. Upon the satisfactory completion of such final testing demonstrating compliance with the above specifications (with any permitted variations/tolerances) The Company may issue a Test Certificate which shall be conclusive evidence of such compliance and thereupon installation of the Goods shall be deemed to be complete and in compliance with the

Company's obligations under the Contract. In any event the Buyer agrees that the Goods are accepted (i) seven (7) days after the date on which the Company notifies the Buyer that final testing was successfully completed or issues the Test Certificate or (ii) on the date the Buyer first uses the Goods for operational use, whichever is earlier. For partial deliveries this Section applies to each item of the Goods.

- 11.3. The Buyer, at its reasonable request, shall be entitled to be present at and to witness the testing and shall not be entitled to raise any objection to testing carried out, or to the results thereof, if the Buyer fails to attend when advised that testing was to take place.
- 11.4. Where Goods are supplied by the Company in returnable containers, these must be returned at the Buyer's expense and in good condition, if requested by the Company. Title to these containers shall remain with the Company at all times, but they shall be held at the risk of the Buyer until returned to the Company. Failure by the Buyer to comply with the above provision shall entitle the Company to invoice the Buyer for the full replacement value of the containers.

## 12. SUPPLY OF THE SERVICES

- 12.1. The Company shall provide the Services to Buyer in accordance with the contract in all material respects.
- 12.2. The Company shall use all reasonable endeavours to meet any dates specified for the performance of the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 12.3. The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify Buyer in any such event.
- 12.4. Delivery of the Services shall be deemed to be completed by the Company at the time of completion by the Company of the performance of the Services.
- 12.5. If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by Buyer or failure by Buyer to perform any relevant obligation ("**Buyer Default**"):
- 12.5.1. the Company shall without limiting its other rights or remedies have the right to:
- 12.5.1.1. suspend performance of the Services until Buyer remedies the Buyer Default; and
- 12.5.1.2. rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Company's performance of any of its obligations;
- 12.5.2. the Company shall not be liable for any costs or losses sustained or incurred by Buyer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this Condition 12.5; and
- 12.5.3. Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.
- 12.6. The Company is under no obligation to provide Services unless the Buyer ensures adequate and safe facilities exist at its premises and that the Company is properly notified of any hazardous conditions, relevant regulations, and safety procedures. In particular, the Buyer shall be responsible for taking all necessary actions prior to the Company performing the installation/Services to remove and/or remediate any hazardous conditions or materials from the Goods or service area. If any risks can result from the co-activities between the Company, Buyer (and/or any third party) in the work area, such risks shall be addressed through a mutually agreed safety coordination plan.

- 12.7. If the Buyer has purchased Goods or Services including remote access support, the Buyer will permit the Company to connect to the Goods by remote access and maintain such connection as required by the Company for the performance of maintenance or repair activities as part of the Company's warranty obligations or otherwise. This may include automatic software downloads and proactive monitoring and access to performance data related to the goods, to gather and use goods and resource usage data in various ways such as product development, quality initiatives, benchmarking and reporting services. If remote access is not provided, the Company reserves the right to charge the Buyer for onsite support at the Company's then current pricelist.
- 12.8. Buyer shall be responsible for proper management, storage, and disposal of all Service and/or installation-related waste, unless otherwise agreed in writing or the Company is legally required to take back the materials. Unless the relevant mandatory national legislation provides otherwise, or unless otherwise agreed in writing, the Company's obligation to take back electrical and electronic equipment waste (WEEE) does not include creation of physical access to the equipment; de-installation; decoupling; disinfecting; craning/lifting; transportation to a ground level loading area or -ramp; packing; or any related similar activities; and Buyer agrees to perform such activities at its own cost as and when required.
- 12.9. When required by the Company, Buyer shall make available at least one (1) suitably qualified person who can ensure the safety of the Company personnel at all times during installation/performance of the Services. If no such person is made available, the Company reserves the right to charge Buyer at the Company's then current pricelist for an additional the Company person to be present.
- 12.10. Buyer shall:
- 12.10.1. provide tools and labour to un-crate the Goods and move the Goods to the designated location on Buyer's premises;
  - 12.10.2. cooperate with the Company in all matters relating to the Services;
  - 12.10.3. provide the Company, its employees, agents, consultants and subcontractors, with access to Buyer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;
  - 12.10.4. provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - 12.10.5. prepare Buyer's premises for the supply of the Services;
  - 12.10.6. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
  - 12.10.7. indemnify the Company against all claims, demands, losses, expenses and costs the Company may incur as a result of any employee, agent, consultant, or subcontractor of the Company visiting the premises, office accommodation and other facilities of Buyer for the purposes of the supply of the Services.

### 13. RESTRICTED USE

- 13.1. With respect to certain Goods, use restrictions are a condition of the purchase which Buyer must satisfy by strictly abiding by the restriction as set forth in the Company's catalogue and/or on the Goods and/or accompanying documentation. The Buyer is solely liable to ensure compliance with any regulatory requirements related to the Buyer's use of the Goods. Any warranty granted by the Company to the Buyer shall be deemed void if any Goods covered by such warranty are used for any purpose not permitted hereunder. In addition, the Buyer shall indemnify the Company and hold the Company harmless from and against any and all claims, damages, losses, costs, expenses and other liability of whatever nature that the Company suffers or incurs by reason of any such unintended use.

**14. WARRANTY**

- 14.1. Condition 14.2 - 14.4 shall apply in the event no other specific warranty has been agreed in the Contract. As regards any Goods covered by a warranty issued by a third party manufacturer, such warranty terms shall apply to the exclusion of Section 14.2 -14.4.
- 14.2. Goods are warranted from date of delivery or the Company completing any agreed installation works, if later, to be free of defects in workmanship or materials under normal usage for a period of one (1) year and any claim shall be submitted in writing within such period. The Company's sole liability and Buyer's exclusive remedy for a breach of this warranty is limited to repair, replacement or refund at the sole option of the Company. Such repairs or replacement will not extend the warranty period.
- 14.3. Software - the Company warrants, for a period which is the longer of:
- 14.3.1. three (3) months from the date of delivery or;
  - 14.3.2. in the event the Software is intended to be installed and run on the Company's Goods of its own manufacture, twelve (12) months from the date of delivery, that the Software substantially conforms to its published specifications and that the media on which the Software resides will be free from defects in materials and workmanship under normal use and any claim shall be submitted in writing within such period. The Company does not warrant that the Software is error free or that Buyer will be able to operate the Software without problems or interruptions. The Company's sole liability and Buyer's exclusive remedy in the event of breach of this warranty is limited to repair, replacement, or refund, at the sole option of the Company.
- 14.4. Services - the Company warrants that all Services will be carried out with reasonable care and skill. the Company's sole liability for breach of this warranty shall be at its option to give credit for or re-perform the Services in question. This warranty shall only extend for a period of ninety (90) days after the completion of the Services and any claim shall be submitted in writing within such period.
- 14.5. To the maximum extent permitted by applicable law the Company hereby expressly disclaims, and Buyer hereby expressly waives, any warranty regarding results obtained through the use of the Goods, including without limitation any claim of inaccurate, invalid, or incomplete results. All other warranties, representations, terms and conditions (statutory, express, implied or otherwise) as to quality, condition, description, merchantability, fitness for purpose or non-infringement (except for the implied warranty of title) are hereby expressly excluded.
- 14.6. Unless expressly agreed, the Company is not obliged to carry out dismantling or re-installation of any Goods in connection with any warranty claims.

**15. SOFTWARE LICENCE**

- 15.1. Unless a separate software license agreement has been concluded concerning the Software, the Buyer is hereby granted a non-exclusive license to use the Software solely in object code format and solely for its own internal business purposes subject to the terms contained herein. The Buyer shall not (i) use the Software for purposes other than those for which it was designed; (ii) use the Software in connection with other manufacturers' products unless such connectivity is authorized in the Product documentation; (iii) grant, assign, transfer, or otherwise make available to third parties any right whatsoever in the Software; (iv) disclose to third parties any information contained in the Software;(v) copy or reproduce the Software (except for one copy for back-up purposes or as may otherwise be permitted by applicable law); (vi) alter or modify the Software; or (vii) reverse engineer, decompile, disassemble or create any derivative works based upon the Software except as expressly permitted by mandatory law

**16. CLAIMS**

- 16.1. It is Buyer's responsibility to ensure that the Goods are suitable for Buyer's requirements. Buyer undertakes to ensure that all Goods are unpacked and handled only by persons qualified to handle the Goods.
- 16.2. To the extent permitted by law, all conditions, warranties or obligations whether express or implied by statute, common law or otherwise are excluded and the provisions of these Conditions shall apply in lieu thereof.
- 16.3. The Company shall not be liable for loss of or damage to the Goods in transit unless the Company is arranging carriage and:
- 16.3.1. in the case of loss of the Goods, within 5 Business Days of the date notified by the Company to Buyer as being the date on which the Goods were despatched from the Company's premises Buyer gives written notice to the Company and the carrier that it has not received the Goods;
- 16.3.2. in the case of partial loss of or damage to the Goods:
- 16.3.2.1. in the case of damage to the Goods which is apparent at delivery, Buyer shall within 5 Business Days of delivery give notice to the Company and the carrier that the Goods are so damaged, and in the case of damage to the Goods which is latent at delivery, Buyer shall within 5 Business Days of becoming aware of such damage give notice to the Company that the Goods are so damaged;
- 16.3.2.2. Buyer retains the packaging for inspection by the carrier or its insurers; and
- 16.3.2.3. Buyer complies with any requests of the Company in respect of the damaged Goods including, without limitation, the taking of photographs of the damaged Goods and the provision to the Company of such photographs and any other information required by the Company.
- 16.4. The Company shall not be liable for defective Goods unless:
- 16.4.1. Buyer gives written notice to the Company as soon as possible and in any case within 5 Business Days of becoming aware of such defect, and such notice is given no later than 12 months from the date of delivery of the Goods to Buyer, specifying with reasonable detail any matter whereof it is alleged that the Goods are defective; and
- 16.4.2. the defective Goods are returned carriage paid at Buyer's risk to the Company's premises (and section 36 of the Sale of Goods Act 1979 shall not apply).
- 16.5. The Company's liability under Conditions 16.3 and 16.4 whether based on negligence or any other cause of action shall be limited to repairing or replacing the lost, damaged or defective Goods or, at the Company's option, repaying a corresponding proportion of the price paid by Buyer and the Company shall not be under any other liability thereunder whatsoever.
- 16.6. Subject to Condition 16.4.1, where the Goods:
- 16.6.1. are damaged or defective; and
- 16.6.2. have been installed as a fixed in-situ installation and Buyer is unable to return the Goods to the Company;

the Company will despatch an engineer to Buyer's premises. The Company will carry out on-site servicing and repairs in respect of such damaged or defective Goods at the Company's cost, but may at its discretion charge to Buyer the travelling and subsistence expenses incurred by the Company's engineer.

- 16.7. No claim will be met by the Company under Conditions 16.3 and 16.4 if, in the opinion of the Company:
- 16.7.1. the defect is not due solely to defective materials or manufacture by the Company;
  - 16.7.2. the Goods have been misused or subjected to neglect, carelessness or abnormal conditions or involved in any accident or attempt at repair, replacement or modification or dealt with contrary to any directions issued by the Company; or
  - 16.7.3. the terms of payment set out in Condition 6 have not been complied with.
- 16.8. Where all or part of the Goods have been manufactured by a third party, the Company shall pass to Buyer the benefit of any guarantee received by the Company from the manufacturer of the Goods.
- 16.9. The Company gives no warranty and makes no representation that any sale or use by Buyer of the Goods will be free from infringement of any patent or other intellectual property right owned or controlled by any third party.

**17. AFTERSALES SUPPORT**

- 17.1. The Company shall at its discretion provide aftersales support for Buyer by telephone, email and fax.
- 17.2. Where Buyer wishes to replace:
- 17.2.1. consumable parts, Buyer shall purchase such parts from the Company save that where such parts are not manufactured by the Company, Buyer shall purchase such parts directly from the manufacturer as notified by the Company to Buyer;
  - 17.2.2. non-consumable parts, Buyer shall purchase such parts from the Company.
- 17.3. Subject to Condition 16.6, on-site servicing and repairs at Buyer's premises shall be undertaken by the Company's qualified engineers at the Buyer's cost.

**18. DATA PROTECTION**

- 18.1. The Buyer and the Company shall comply with data protection laws applicable to their respective processing of personal data under the Contract.
- 18.2. Prior to returning any equipment to the Company, the Buyer shall decontaminate it and ensure that all personal data, including but not limited to patient personal data stored in such equipment is deleted. The Buyer acknowledges that, in any case, all data and settings stored in the returned equipment may be deleted by the Company.
- 18.3. Prior to and during the Contract, the Buyer may provide the Company with personal data relating to its personnel or other individuals involved in the use of the Goods or Services. The Buyer consents to the processing of this personal data by the Company, its affiliates and their respective suppliers, and shall, to the extent legally required, provide appropriate notice to each individual or obtain requisite consent to such processing of his or her personal data for the following specific purposes: (i) performing the Contract; (ii) providing information about the Company Goods and services; (iii) transferring personal data as specified in Clause 18.4 and (iv) satisfying legal or regulatory requirements.
- 18.4. The Company may transfer personal data relating to the Buyer's personnel or other individuals involved in the use of Goods and Services to recipients located in countries outside of the European Economic Area and to the extent the Buyer is the data controller of such data, the Buyer will (1) provide appropriate notice to the relevant individuals, (2) obtain any requisite consent, (3) provide individuals with applicable choices with respect to the use, disclosure or other processing of their personal data, and (4) provide individuals with the opportunity to exercise their right to access their personal data. The Company has taken steps to provide adequate protection with respect to personal data sent outside of the European Economic Area, and will, upon request of the Buyer, negotiate regarding the

applicability of any further data processing or data transfer agreement as may be required to support the lawful transfer of personal data.

- 18.5. The Buyer agrees that the Company may process certain de-identified and/or aggregated data for the purposes described in Section 12.2.

## **19. HEALTH AND SAFETY**

The Buyer shall ensure that:

- 19.1. the Goods (provided such Goods comply with its specifications) are suitable and safe for the Buyer's intended use;
- 19.2. the Goods are handled in a safe manner; and
- 19.3. containers, packaging, labelling, equipment and vehicles, where provided by the Buyer, comply with all relevant national and international safety regulations.

## **20. RETENTION OF TITLE**

- 20.1. Notwithstanding delivery the title in the Goods will remain in the Company and subject to the following provisions of this Condition 18 Buyer will hold the Goods as bailee for the Company until payment in full and in cleared funds of:

20.1.1. the full purchase price of the Goods or any other goods at any time supplied by the Company; and

20.1.2. all other sums due from Buyer to the Company on any account whatsoever.

- 20.2. Until title to the Goods has passed to Buyer, Buyer shall:

20.2.1. store the Goods in such a way that they are readily identifiable as the property of the Company;

20.2.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

20.2.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery and provide the Company with a copy of such policy of insurance on request; and

20.2.4. give the Company such information relating to the Goods as the Company may require from time to time.

- 20.3. The Company may at any time without notice inspect or recover possession of the Goods which are the property of the Company and Buyer grants to the Company an irrevocable licence to enter for that purpose any premises then occupied by Buyer.

- 20.4. The Company shall be entitled to maintain an action for the price of the Goods, notwithstanding that the title in them has not passed to Buyer.

## **21. LIABILITY**

- 21.1. Nothing in these Conditions shall limit or exclude the Company's liability for:

21.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

- 21.1.2. fraud or fraudulent misrepresentation;
  - 21.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;
  - 21.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 21.1.5. any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 21.2. The Company shall have no liability under the warranties contained in Section 13 in respect of any defect in the Goods arising from: specifications or materials supplied by the Buyer; fair wear and tear; wilful damage or negligence of the Buyer or its employees or agents; abnormal working conditions at the Buyer's premises; failure to maintain the site in accordance with the Company's pre-installation requirements; failure to comply with user manual, or the Company's use restrictions or other instructions (whether oral or in writing); misuse or alteration or repair of the Goods without the Company's approval; or if the Buyer is in breach of its payment obligations under this Contract. If any of the exclusions set out in this Section 21.2 apply, the Company reserves the right to charge the Buyer for repairing such defect at the Company's then current pricelist.
- 21.3. Subject to Condition 21.1,
- 21.3.1. the Company shall under no circumstances be liable to Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with any contract made between Buyer and the Company; and
  - 21.3.2. the Company's total liability to Buyer in respect of all other losses arising under or in connection with any such contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods or the Services (as applicable) under such contract.
- 21.4. The exclusion of liability in these Terms and Conditions shall only apply to the extent allowed according to applicable law.

## **22. TERMINATION**

- 22.1. The Company shall have the right to cancel all or any contracts with Buyer, withhold delivery of any Goods, or suspend the supply of the Services, if Buyer:
- 22.1.1. fails to pay any monies owing to the Company by the due date;
  - 22.1.2. commits a material breach which is incapable of remedy of any of the provisions of these Conditions;
  - 22.1.3. commits a material breach which is capable of remedy of any of the provisions of these Conditions and Buyer has failed to remedy such breach within 7 Business Days of the date of receipt from the Company of a notice specifying the breach and requiring it to be remedied;
  - 22.1.4. becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, has a receiver, manager, administrator or administrative receiver appointed over its assets, undertakings or income, has passed a resolution for its winding-up, or has a petition presented to any Court for its winding-up or for an administration order or suffers any similar or analogous proceedings in any jurisdiction;
  - 22.1.5. has any distraint, execution or other process levied or enforced on any of its property;
  - 22.1.6. is dissolved or ceases or threatens to cease to trade; or

- 22.1.7. brings the reputation of the Company into serious disrepute or otherwise causes the Company to suffer material adverse publicity and following receipt from the Company of a notice informing Buyer that this is the case, Buyer has failed to remedy the matter, event or circumstance which caused or resulted in such serious disrepute or material adverse publicity within 22 Business Days of the date of such notice.
- 22.2. On termination of any contract between the Company and Buyer howsoever arising Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods or Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by Buyer immediately on receipt.
- 22.3. Termination of any contract between the Company and Buyer howsoever arising shall not affect any of the rights, remedies obligations and liabilities of either the Company or Buyer that have accrued as at termination and Conditions 17, 21, and 30 will continue to be enforceable notwithstanding termination.

### **23. INTELLECTUAL PROPERTY**

- 23.1. Except as otherwise agreed in writing by the Company, Buyer shall have no rights in respect of any intellectual property rights used by the Company in relation to the Goods or the Services or the associated goodwill.
- 23.2. Buyer shall not:
  - 23.2.1. use in relation to the Goods any trade marks or names other than the Company's trade marks without obtaining the prior written approval of the Company;
  - 23.2.2. use any trade marks or names so resembling the Company's trade marks as to be likely to deceive or cause confusion;
  - 23.2.3. make any modifications to the Goods or their packaging;
  - 23.2.4. alter, remove or tamper with any trade marks, numbers or other means of identification used on or in relation to the Goods; or
  - 23.2.5. apply to register any of the intellectual property rights of the Company nor any trade marks or trade names so nearly resembling the Company's trade marks as to be likely to deceive or cause confusion.
- 23.3. Buyer shall immediately inform the Company on becoming aware of:
  - 23.3.1. any relevant fact which may affect the Company's intellectual property rights or reputation or cause the Company to suffer material adverse publicity;
  - 23.3.2. any counterfeit of the Goods; and
  - 23.3.3. any infringement of the intellectual property rights of the Company.
- 23.4. Buyer shall not acquire or be entitled to claim any right, title or interest to the Company's trade marks or trade name by virtue of the rights granted in these Conditions.

### **24. CONFIDENTIALITY**

- 24.1. Each of Buyer and the Company 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, including in relation to these Conditions and any contract between Buyer and the Company, except as permitted by Condition 24.2.
- 24.2. Each of Buyer and the Company may disclose the other party's confidential information:

24.2.1. 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 these 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 Condition 24.2; and

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

24.3. Neither Buyer nor the Company shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Conditions.

**25. WAIVER**

25.1. None of the provisions of these Conditions shall be deemed to have been waived by any act or acquiescence, but only by an instrument in writing. No waiver of any provision of these Conditions shall constitute a waiver of any other provision or of the same provision on another occasion.

**26. ASSIGNMENT**

26.1. Buyer shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any other person.

**27. SEVERANCE**

27.1. If any Condition or part of any Condition shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other Condition or part of any Condition all of which shall remain in full force and effect.

**28. NOTICES**

28.1. Any notice required or authorised to be given under these Conditions shall be in writing and may be served:

28.1.1. by first class recorded delivery post; or

28.1.2. by email.

28.2. In proving service of any notice under these Conditions it shall be sufficient to prove:

28.2.1. in the case of a notice sent by recorded delivery post, that the envelope containing the notice was properly addressed to the address last known to the party giving the notice; and

28.2.2. in the case of a notice sent by email, that the notice was successfully transmitted to the email address as the recipient may designate from time to time by notice given in accordance with the provisions of this Condition 28.

28.3. Notices shall be deemed served:

28.3.1. in the case of a notice sent by recorded delivery post, on the fourth Business Day following the day of posting;

28.3.2. in the case of a notice sent by email, one hour after transmission, or if not sent on a Business Day, on the next Business Day.

**29. FORCE MAJEURE**

- 29.1. The Company shall not be liable to Buyer as a result of any delay or failure to perform its obligations under these Conditions as a result of a Force Majeure Event.
- 29.2. The Company reserves the right to:
- 29.2.1. defer the date of delivery;
  - 29.2.2. cancel the contract; or
  - 29.2.3. reduce the volume of the Goods ordered by Buyer or the Services to be performed for Buyer (without liability to Buyer),

if it is prevented from or delayed in the carrying on of its business due to a Force Majeure Event (as defined in Condition 29.4) provided that, if the Force Majeure Event in question continues for a continuous period of 10 Business Days, Buyer shall be entitled to give not less than 5 Business Days' notice in writing to the Company to terminate the contract and in such circumstances Buyer shall pay for all Goods supplied and Services performed to the date of such termination, such payment to be made on or before the last day of the month following the month during which termination was effected.

- 29.3. If the Company is prevented from delivering part of the Goods by reason of a Force Majeure Event, the Company shall deliver and Buyer shall take and pay for such part of the Goods as the Company shall be able to deliver in accordance with the contract. The Company shall be entitled to deliver the Goods in one or more consignments unless otherwise expressly agreed.
- 29.4. A "**Force Majeure Event**" means the occurrence of any event beyond the Company's reasonable control including, without limitation, strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 29.5. If the Company has contracted to provide identical or similar goods to more than one Buyer and is prevented from fully meeting its obligations by reason of any of the causes referred to in Condition 29.4, the Company may determine which contracts it will honour and to what extent at its own discretion.

**30. GOVERNING LAW AND JURISDICTION**

- 30.1. These Conditions and any contract between Buyer and the Company shall be governed by and construed in accordance with English law.
- 30.2. The English courts shall have exclusive jurisdiction in respect of any claim or matter arising out of or in connection with these Conditions and any contract between Buyer and the Company and that accordingly any proceedings in respect of any such claim or matter shall be brought in such courts.