



TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

THE BUYER'S ATTENTION IS BROUGHT PARTICULARLY TO:

CLAUSE 3.5 (NO RIGHT TO CANCEL) AND CLAUSE 12 (LIMITATION OF LIABILITY)

1. Interpretation

1.1 In these Conditions:

'BUSINESS DAY' means a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

'BUYER' means the person or firm who purchases Goods and/or Services from the Supplier as detailed in the Order Form.

'BUYER MATERIALS' means all documents, information, items and materials in any form, whether owned by the Buyer or a third party, which are provided by the Buyer to the Supplier in connection with the Services as detailed in the Order Form.

'CHARGES' means the charges payable by the Buyer for the supply of the Goods and/or Services as detailed in clause 6 of these Conditions and the Order Form.

'COMMENCEMENT DATE' has the meaning set out in clause 2.2.

'CONDITIONS' means these terms and conditions as varied or amended from time to time in accordance with clause 18.8.

'CONTRACT' means the contract between the Supplier and the Buyer for the supply of the Goods and/or Services in accordance with these Conditions.

'DELIVERY LOCATION' means the location set out in the Order Form or such other location as the parties may agree in writing.

'EXPERT' an independent firm [WITHIN THE INDUSTRY] of repute appointed in accordance with clause 5 to resolve any dispute arising between the parties in connection with the approval of the design of the deliverables.

'FORCE MAJEURE EVENT' has the meaning given to in clause 13.1.

'GOODS' means the goods (including any instalment of the goods or any parts for them) including any deliverables which are produced as a result of the Services which the Supplier is to supply in accordance with these Conditions and detailed in the Order Form.

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

'ORDER' means the Buyer's order for the supply of Goods and/or Services, as set out in the Order Form.

'ORDER FORM' means the order form including but not limited to details of the Goods and/or Services and any deliverables.

'SERVICES' means the services, including any deliverables, supplied by the Supplier to the Buyer as per the Order Form.

'SPECIFICATION' means the description or specification of the Goods and/or Services provided in writing by the Supplier to the Buyer and appended to the Order Form.

'SUPPLIER' means Nortek Electronic Circuits Limited (registered in England under number 01364984)

- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 A reference to a party includes its successors and permitted assigns.
- 1.6 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.7 A reference to writing or written includes email but not fax.

2. Basis of the supply

- 2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues to the Buyer a countersigned Order Form at which point, and on which date the Contract shall come into existence (Commencement Date).
- 2.3 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 No variation of these Conditions shall be binding unless agreed in writing and signed by the authorised representatives of the Buyer and the Supplier.
- 2.7 Any advice or recommendation given by the Supplier or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods and/or the provision of Services which is not confirmed in writing by the Supplier is followed or acted upon entirely at the Buyer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.8 Any typographical, clerical or other error or omission in any 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.
- 2.9 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.10 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Orders and Specifications

- 3.1 The Buyer shall be responsible to the Supplier for ensuring the accuracy of an Order (including any applicable specification) submitted by the Buyer, and for giving the Supplier any necessary information relating to the Goods and/or Services to enable the Supplier to perform the Contract in accordance with these Conditions.
- 3.2 The quantity, quality and description of the Goods and/or Services shall be in accordance with the Specification.
- 3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Supplier in accordance with an Order submitted by the Buyer, the Buyer shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim for infringement of any Intellectual Property Rights of any other person which results from the Supplier's use of the Order.
- 3.4 The Supplier reserves the right to amend the Specification of the Goods and/or Services if required by any applicable statutory or regulatory requirements or which do not materially affect the quality or performance.
- 3.5 **Once accepted by the Supplier in accordance with clause 2.2, no Order may be cancelled by the Buyer except with the agreement in writing of the Supplier and on terms that the Buyer 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.**

4. Provision of Services

- 4.1 The Supplier shall supply the Services to the Buyer in accordance with the Specification in all material respects.
- 4.2 Where the Services fail to comply with clause 4.1 the Supplier will, at its option, provide a full refund or re-perform the Services to comply with clause 4.1, provided that:
 - 4.2.1 the Buyer informs the Supplier in writing within 10 Business Days of completion of the Services that the Services do not comply with clause 4.1; and
 - 4.2.2 the Buyer gives the Supplier a reasonable opportunity to investigate any allegedly defective Services.
- 4.3 The terms of these Conditions will apply to any re-performed Services.
- 4.4 The Supplier will not be liable for any failure of any Services to comply with clause 4.1 to the extent that such failure is:
 - 4.4.1 caused by the Buyer's failure to comply with the Supplier's instructions in relation to the Services;
 - 4.4.2 caused by the Supplier following any specification or other document supplied by or instruction from the Buyer;
 - 4.4.3 caused by the Buyer altering the Services or the results of the Services without the Supplier's prior written agreement; or
 - 4.4.4 caused by the Buyer using the Services or the results of the Services after notifying the Supplier that the Services do not comply with clause 4.1.
- 4.5 The Supplier shall use all reasonable endeavours to meet any estimated timescales specified in the Order Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. For the avoidance of any doubt, the Supplier shall not be liable to the Buyer or any third party as a result of any delay or failure to perform its obligations under this Contract as a result of any act or omission of the Buyer or any third party.
- 4.6 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Buyer in any such event.
- 4.7 The Supplier warrants to the Buyer that the Services will be provided using reasonable care and skill.

- 4.8 Where the Supplier supplies in connection with the provision of the Services any goods supplied by a third party, the Supplier does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Buyer the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Supplier. The Supplier shall have no liability to the Buyer for any loss, damage, costs, expenses or other claims for compensation arising from any material drawings designs data information (in whatever format) or instructions supplied by the Buyer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Buyer.
- 4.9 The Buyer shall:
- 4.9.1 ensure that the terms of the Order Form and any information it provides in the Specification are complete and accurate;
 - 4.9.2 co-operate with the Supplier in all matters relating to the supply of the Goods and/or Services;
 - 4.9.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Goods and/or Services;
 - 4.9.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 4.9.5 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;
 - 4.9.6 keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Buyer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 4.10 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (Buyer Default):
- 4.10.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays the Supplier's performance of any of its obligations;
 - 4.10.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.10; and
 - 4.10.3 the Buyer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Buyer Default.

5. Development of Goods

- 5.1 The Supplier shall design the Goods as detailed in the Order Form.
- 5.2 The Supplier shall provide the designs to the Buyer Representative via email and the approval procedure in this clause 5 will be followed.
- 5.3 The Buyer will have 10 Business Days from receipt of a design to provide written notice to the Supplier to confirm whether or not a design is approved.
- 5.4 In the event that the Buyer does not confirm its approval then the notice in clause 5.3 shall specify in reasonable detail each matter or item not approved and, to the extent practicable, any adjustments which the Buyer considers should be made to a design (Disapproval Notice).

- 5.5 If the Buyer fails to provide the notice detailed in clause 5.3 then a design will be deemed approved by the Buyer and the Supplier shall be at liberty to proceed to manufacture.
- 5.6 If the Buyer serves a Disapproval Notice in accordance with clause 5.4, the parties shall, during the period of 10 Business Days commencing on the date of service of the Disapproval Notice (Resolution Period), seek in good faith to reach agreement on the disputed matters.
- 5.7 If the disputed matters are not resolved by the parties in writing during the Resolution Period, then at any time following the expiry of the Resolution Period either party may, by written notice to the other party, require the disputed matters to be referred to an Expert for determination.
- 5.8 The Supplier and the Buyer shall bear and pay their own costs incurred in connection with the resolving the matters contained within a Disapproval Notice.

6. Charges for the Goods and/or Services

- 6.1 The price for Goods:
 - 6.1.1 shall be the price set out in the Order Form or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery; and
 - 6.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Buyer.
- 6.2 The charges for Services shall be calculated on a time and materials basis:
 - 6.2.1 the charges shall be calculated in accordance with the Supplier's hourly fee rates, as set out in the Order Form;
 - 6.2.2 the Supplier shall be entitled to charge for any time worked by individuals whom it engages on the Services;
 - 6.2.3 the Supplier shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 6.3 The Supplier reserves the right to:
 - 6.3.1 increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;
 - 6.3.2 increase the price of the Goods, by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - 6.3.2.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 6.3.2.2 any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 6.3.2.3 any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

- 6.4 An estimate of the likely Charges for the Services is detailed in the Order Form; this is an estimate only and the Supplier shall be entitled charge in accordance with this clause 6 regardless of whether the Charges exceed the estimated figure.
- 6.5 The Supplier shall be entitled to charge overtime at rate of time and a half in the event the Supplier is requested by the Buyer to work outside the hours of 8.00 am and 5.00pm and such overtime will be paid in addition to the Charges.
- 6.6 In respect of Goods, the Supplier shall invoice the Buyer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Buyer in accordance with the Order Form.
- 6.7 If this Contract relates to the supply of Goods, unless otherwise agreed in writing between the Buyer and the Supplier, all Charges are on an ex works basis. Where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Buyer shall be liable to pay the Supplier's charges for transportation and packaging (as well as insurance pursuant to Clause 9). In addition, the cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided such pallets and/or containers are returned undamaged to the Supplier before the date when payment is due under clause 7.
- 6.8 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

7. Terms of payment

- 7.1 The Buyer shall pay each invoice submitted by the Supplier:
- 7.1.1 within 30 days of the date of the invoice (unless such other timeframe is agreed in writing by the Supplier with the Buyer); and
- 7.1.2 in full and in cleared funds to a bank account nominated in writing by the Supplier or by any other method as agreed with the Supplier.
- 7.2 The Supplier shall be entitled to payment of its invoice in accordance with clause 7.1, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer.
- 7.3 Time for payment shall be of the essence of the Contract.
- 7.4 Receipts for payment will be issued only upon request.
- 7.5 If the Buyer fails to make any payment due to the Supplier under the Contract on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
- 7.5.1 cancel the Contract or suspend any further deliveries or provision of Goods and/or Services to the Buyer;
- 7.5.2 appropriate any payment made by the Buyer to such of the Goods and/or the Services as the Supplier may think fit (notwithstanding any purported appropriation by the Buyer); and
- 7.5.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 5% per annum above HSBC plc's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 7.6 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Supplier to the Buyer.

8. Delivery of Goods

- 8.1 The Supplier shall deliver the Goods to the Delivery Location at any time after the Supplier notifies the Buyer that the Goods are ready.
- 8.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location (which for the avoidance of any doubt may be the Supplier's premises).
- 8.3 Any dates quoted for delivery of the Goods are approximate only and the Supplier shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Supplier in writing. The Goods may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 8.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 8.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. 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 or the Buyer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 8.6 If the Buyer fails to accept or take delivery of the Goods on the day the Supplier notifies the Buyer that the Goods are ready, then except where such failure or delay is caused by an event beyond the Buyer's reasonable control or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 8.6.1 delivery of the Goods shall be deemed to have been completed on the day on which the Supplier notified the Buyer that the Goods were ready; and the Supplier shall:
- 8.6.1.1 store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance); or
- 8.6.1.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

9. Risk and property

- 9.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 9.1.1 in the case of Goods to be delivered at the Supplier's premises, at the time when the Supplier notified the Buyer that the Goods are available for collection; or
- 9.1.2 in the case of Goods to be delivered otherwise than at the Supplier's premises, at the time when the Goods leave the Supplier's premises for delivery to the Delivery Location.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title to the Goods shall not pass to the Buyer until the Supplier has received in cash or cleared funds payment in full for the price of the Goods and all other goods agreed to be sold by the Supplier to the Buyer for which payment is then due.
- 9.3 Until such time as the title to the Goods passes to the Buyer, the Buyer shall:
- 9.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
- 9.3.2 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Supplier's property;
- 9.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- 9.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price;
 - 9.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.9; and
 - 9.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 9.4 If before title to the Goods passes to the Buyer:
- 9.4.1 the Buyer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.9; or
 - 9.4.2 the Supplier reasonably believes that any such event is about to happen and notifies the Buyer accordingly,
 - 9.4.3 then, provided the Goods have not been resold, or irrevocably incorporated into another product and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
- 9.5 If the Goods are recovered under clause 9.4 the Supplier shall be entitled to recover any and all of its losses arising as a result of such recovery.
- 9.6 The Buyer 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 property of the Supplier, but if the Buyer does so all monies owing by the Buyer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

10. Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Buyer Materials) shall be owned by the Supplier.
- 10.2 In relation to the Goods, the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Goods, excluding the Buyer Materials.
- 10.3 The Supplier grants to the Buyer, or shall procure the direct grant to the Buyer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Goods (excluding the Buyer Materials) for the purpose of receiving and using the Services and the Goods in its business.
- 10.4 The Buyer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.3.

11. Warranties

- 11.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (Warranty Period), the Goods shall:
 - 11.1.1 conform in all material respects with the Specification;
 - 11.1.2 be free from material defects in design, material and workmanship;
 - 11.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - 11.1.4 be fit for any purpose confirmed in writing by the Supplier.
- 11.2 Subject to clause 11.3, the Supplier shall at its option, replace the defective Goods or refund the price of the defective Goods in full if:
 - 11.2.1 the Buyer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 11.1;

- 11.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
- 11.2.3 the Buyer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Buyer's cost.
- 11.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 11.1 if:
 - 11.3.1 if the total price for the Goods has not been paid by the due date for payment;
 - 11.3.2 the Buyer makes any further use of such Goods after giving a notice in accordance with clause 11.2;
 - 11.3.3 the defect arises because the Buyer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 11.3.4 the defect arises as a result of the Supplier following any drawing, design or Goods specification supplied by the Buyer;
 - 11.3.5 the Buyer alters or repairs such Goods without the written consent of the Supplier;
 - 11.3.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - 11.3.7 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 11.4 The warranty in clause 11.1 does not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier.
- 11.5 Except as provided in this clause 11, the Supplier shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 11.1.
- 11.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 11.3.

12. Limitation of Liability

- 12.1 Nothing in this Contract shall limit or exclude the Supplier's liability for:
 - 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 12.1.2 fraud or fraudulent misrepresentation;
 - 12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 12.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 12.1.5 defective products under the Consumer Protection Act 1987.
- 12.2 Subject to clause 12.1, the Supplier shall not be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
 - 12.2.1 loss of profit;
 - 12.2.2 loss of sales or business;
 - 12.2.3 loss of agreements or contracts;
 - 12.2.4 loss of anticipated savings;

- 12.2.5 loss of use or corruption of software, data or information;
 - 12.2.6 loss of or damage to goodwill; or
 - 12.2.7 indirect or consequential loss
 - 12.2.8 arising under or in connection with the Contract.
- 12.3 Subject to clause 12.1, the Supplier's total liability to the Buyer 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, including losses caused by a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors shall not exceed the amount paid by the Buyer to the Supplier for the Goods and/or Services provided by the Supplier in connection with the relevant Contract.
- 12.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.5 This clause 12 shall survive termination of the Contract.

13. Force Majeure

- 13.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, epidemic, pandemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, restriction, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 13.2 The Supplier shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 13.3 If a Force Majeure Event prevents the Supplier from providing any of the Goods and/or Services for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

14. Termination

- 14.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Buyer if:
- 14.1.1 the Buyer commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of the Buyer being notified in writing of the breach;
 - 14.1.2 the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 14.1.3 the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
 - 14.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;

- 14.1.5 the Buyer (being an individual) is the subject of a bankruptcy petition or order;
 - 14.1.6 a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 14.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer (being a company);
 - 14.1.8 a floating charge holder over the assets of the Buyer (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 14.1.9 a person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over the assets of the Buyer;
 - 14.1.10 any event occurs or proceeding is taken with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.2 to clause 14.1.9 (inclusive);
 - 14.1.11 the Buyer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
 - 14.1.12 the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy;
 - 14.1.13 the Buyer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
 - 14.1.14 the Buyer fails to pay any amount due under this Contract on the due date.
- 14.2 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Goods and/or Services under the Contract or any other contract between the Buyer and the Supplier if the Buyer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.9, or the Supplier reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date.

15. Consequences of Termination

- 15.1 On termination or expiry of the Contract for any reason:
 - 15.1.1 the Buyer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
 - 15.1.2 the Buyer shall return any Goods which have not been fully paid for. If the Buyer fails to return any unpaid for Goods, then the Supplier may enter the Buyer's premises or any third party's premises and take possession of them. Until they have been returned, the Buyer or third party shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - 15.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 15.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16. Confidentiality

- 16.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, products, services, customers, clients or suppliers of the other party except as permitted by clause 16.2. Confidential information shall include but not be limited to technical or commercial know-how, specifications, inventions, processes or initiatives.
- 16.2 Each party shall restrict disclosure of confidential information:
- 16.2.1 to such of its employees, agents or subcontractors as need to know it for the purpose of discharging that party's obligations under the Contract and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind that party; and
- 16.2.2 to that as required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3 No party 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 the Contract.
- 16.4 This clause 16 shall survive termination of the Contract.

17. Assignment

- 17.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 17.2 The Buyer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

18. General

- 18.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
- 18.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 18.1.2 sent by email to the address specified in in the Order Form for the relevant party.
- 18.2 Any notice shall be deemed to have been received:
- 18.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 18.2.2 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; or
- 18.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 18.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 18.3 Clauses 18.1 to 18.2 do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 18.4 No waiver by the Supplier of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

- 18.6 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 18.7 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 18.8 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the parties.
- 18.9 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.