

1 INTERPRETATION

1.1 These Conditions shall apply to all Works provided by NOTE UK (as defined in clause 1.2 below) across all NOTE UK manufacturing sites.

1.2 In these Conditions, the following words will (unless the context otherwise requires) have the following meanings:

"Addendum" means any addendum signed by a director or duly authorised representative of the Company which expressly refers to these Conditions.

"Affiliate" means, as regards a party, its ultimate holding company and each of its ultimate holding company's other subsidiaries for the time being.

"Agreement" means any Manufacturing, Supply, Quality, Material, etc. agreement signed by a director or duly authorised representative of the Company which expressly refers to the Contract.

"Company" means the member of NOTE UK that provides the Works, as set out in the Order Acknowledgement.

"Company Materials" means any documents or other materials, and any data or other information provided by the Company relating to the Works.

"Conditions" means these conditions of sale.

"Contract" means any contract between the Company and the Customer for the supply of any Works which, for the avoidance of doubt, includes these Conditions.

"Control" means the person or persons acting in concert:

- (a) controlling or being able to control the composition of a majority of the board of directors of the Customer;
- (b) ultimately or beneficially holding directly or indirectly 50% or more of the equity share capital of the Customer; or
- (c) able to vote over 50% of the issued voting share capital or any class thereof or, who otherwise have controlled influence over either party by virtue of their shareholding in that party or by agreement.

"Customer" means the company, firm, body or person purchasing the Works.

"Customer Property" means any dies, tools, testing equipment, patterns, drawings, specifications, designs, packaging and any other equipment, goods, materials, the Specification, instructions or information supplied by or on behalf of the Customer to the Company in connection with the Works excluding Set-up.

"Delivery Address" means the address for delivery as set out in the Order Acknowledgement or such other address as may be agreed in writing by the Company.

"Goods" means any goods (or any part of them) as set out in the Order Acknowledgement and any goods or Material supplied as part of the Services.

"Intellectual Property Rights" means any and all patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semiconductor topography rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and any 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.

"Losses" means losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and wasted expenditure), claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis).

"Material" means components, cables, printed circuit boards, fixings, consumable etc. detailed in the Specification which the Company purchases from suppliers and or sub contractors for the purpose of the Works including manufacturing contingency and excess as result of supplier pack sizes and minimum order quantities.

"NOTE UK" means NOTE UK Holdings Limited (company number 5257075) and any of its Affiliates.

"Order Acknowledgement" means the document to be completed by the Company and sent to the Customer, including but not limited to, the following information; confirmation of the NOTE UK contracting entity, confirmation of the Works, estimated shipment date and Price.

"Procurement Services" means Services which involve the procurement or sourcing of Material from third parties of Goods.

"Purchase Order" means the document used by Customers to place an order for Goods or Services.

"Services" means any services agreed in the Contract to be provided by the Company to the Customer (including but not limited to the whole or any part or parts of them) and may, where applicable, comprise Procurement Services.

"Set-up" means programming, equipment and costs incurred by the Company, its suppliers and sub contractors in relation to non recurring expenses (NRE) that are essential for the providing of the Services where ownership does not transfer to the Customer.

"Specification" means the specification for the Works, including any related plans and drawings supplied by the Customer to the Company (as amended from time to time by agreement in writing between the parties).

"Tooling" means any die, pattern, mould or other tooling, jigs and fixtures provided by the Company or the Customer for the purpose of manufacturing the Goods and not for any other purpose.

"Working Days" means any day which is not a Saturday or Sunday or a public or bank holiday in England.

"Works" means the Goods and/or the Services (as appropriate).

1.3 The headings in these Conditions are for reference only and will not affect the interpretation of these Conditions.

1.4 In these Conditions:

- (a) any reference to any statute or statutory provision will (unless the context otherwise requires) be construed as a reference to that statute or statutory provision as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time;
- (b) the words **"unless otherwise agreed in writing"** will mean unless otherwise agreed in writing and signed by a director or duly authorised representative of the Company;
- (c) any words or phrases introduced by the terms **"including"**, **"include"**, or any similar terms shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (d) the words **"holding company"** and **"subsidiary"** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006; and
- (e) a reference to **"writing"** or **"written"** includes faxes and email.

1.5 The Company reserves the right at any time to correct any clerical, typographical or other similar errors made by its employees.

- 1.6 The Contract between the Company and the Customer shall constitute only the Purchase Order, Specification, Order Acknowledgement, Conditions, Agreement and the Addendum (if any), to the exclusion of any other terms that the Customer seeks to impose or incorporate.
- 1.7 In the event of any conflict or inconsistency between the documents forming the Contract, the following order of precedence shall apply: Addendum, Agreement; Order Acknowledgement; Conditions; Specification; and Purchase Order.

2 QUOTATIONS

- 2.1 Any quotation (whether written or oral) is given on the basis that no contract will come into existence otherwise than in accordance with the provisions of clauses 3.5 and 3.6.
- 2.2 Any quotation is based on the instructions and information provided by the Customer and Material suppliers. The Company reserves the right to amend the quotation at any time, adjusting price and or delivery according to the amendments to the instructions, information and or Material supplier data.

3 APPLICATION OF TERMS

- 3.1 Subject to clause 3.4, these Conditions are the only conditions on which the Company is prepared to deal with the Customer and they will apply to all Contracts to the exclusion of any other terms and conditions including but not limited to any which the Customer purports to apply.
- 3.2 No terms or conditions endorsed upon, delivered with, referred to or stipulated or contained in any Purchase Order or otherwise delivered or sent by the Customer to the Company will form part of the Contract.
- 3.3 Any reference in these Conditions to the Customer's Purchase Order or other similar document will not be deemed to imply that any terms or conditions endorsed upon, delivered with, referred to or stipulated or contained in such Purchase Order or other similar document will have effect to the exclusion or amendment of these Conditions.
- 3.4 Any variation to these Conditions and any representation about the Works will only be effective if it is agreed in writing, contains a specific reference to these Conditions and is signed by a director or duly authorised representative of both parties.
- 3.5 Each Purchase Order for Works issued by the Customer will be deemed to be an offer by the Customer to purchase Works subject to these Conditions.
- 3.6 No Purchase Order placed by the Customer will be deemed to be accepted by the Company until an Order Acknowledgement is issued by the Company or (if earlier) the Company commences the Works or supplies the Works to the Customer.
- 3.7 Any Purchase Order which has been accepted by the Company in accordance with clause 3.5 and 3.6 may only be amended, cancelled, postponed or varied by the Customer with the prior written consent of the Company and on terms that the Customer will indemnify the Company in full against all costs, damages, charges and expenses incurred (directly or indirectly) by the Company as a result of such amendment, cancellation, postponement or variation (including all Materials, work-in-progress, and costs incurred or committed to by the Company at the Company's sales prices).
- 3.8 The Customer agrees and undertakes that the content of its Purchase Order and any applicable Specification are complete and accurate.
- 3.9 Unless otherwise agreed in writing, all drawings, illustrations, descriptions, specifications, technical data, advertising and other similar information issued by the Company or contained in the Company's catalogues, brochures, trade literature, price lists or other similar published materials are issued or published only for the purpose of giving an approximate idea of the Works described in them and will not form part of the Contract.

- 3.10 The Contract constitutes the entire agreement and understanding of the parties relating to the Works.
- 3.11 The Customer acknowledges that it has not relied on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding made or given by or on behalf of the Company (whether innocently or negligently) which is not expressly set out in the Contract. The Customer shall not have any claim for innocent or negligent misrepresentation based upon any statement, representation, assurance or warranty in the Contract.
- 3.12 Any typographical, clerical or other errors (including omissions) in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction, without any liability on the part of the Company.

4 DELIVERY

- 4.1 The Company shall deliver the Goods to the Delivery Address. Subject to the provisions of clause 4.2, delivery will be deemed to take place when the Goods arrive at the Delivery Address.
- 4.2 If the Company agrees to permit the Customer to collect the Goods from the Company's place of business then delivery will be deemed to take place when the Company notifies the Customer that the Goods are ready for collection and unless otherwise agreed in writing the Customer will collect the Goods within 14 Working Days of the issue of such notice.
- 4.3 Any dates and times specified by the Company for delivery of the Works are intended to be an estimate only and the Company shall not be liable to the Customer if it does not deliver on or at any particular date or time. Time for delivery is not of the essence and shall not be made so by notice. If no delivery dates are specified, delivery will be within a reasonable time.
- 4.4 The Company will use its reasonable endeavours to deliver the Works within the times set out in clause 4.3 but the Company will not be liable for the consequences of any delay or failure to deliver in accordance with any such times.
- 4.5 If for any reason the Customer fails to take delivery of any of the Goods within the period of 14 days after the Company has given the Customer notice that the Goods are ready for delivery (or if the Company is unable to deliver the Goods within that period because the Customer has not complied with clause 4.9 or any other clause):
- completion of delivery of the Goods will be deemed to have taken place at 9.00am on the next Working Day following the expiry of that period;
 - the Goods shall be at the risk of the Customer from the time specified in clause 4.5(a); and
 - without prejudice to any other rights or remedies it may have, the Company may store the Goods until actual delivery and the Customer will be liable for all related costs and expenses (including for storage and insurance).
- 4.6 The Company will use its reasonable endeavours, unless the Customer has given specific instructions, materials or drawings, to ensure where necessary that the Goods will be packed so as to be adequately protected against damage in normal conditions of transit of usual duration. The Company will make such arrangements for the carriage and insurance of the Goods as it agrees with the Customer.
- 4.7 The Company may deliver the Works in instalments. Deliveries of further instalments may be withheld until the Works comprised in earlier instalments have been paid for in full. Default or delay by the Company (howsoever caused) in respect of one or more instalments will not entitle the Customer to terminate the relevant Contract as a whole.
- 4.8 Whilst the Company will use reasonable endeavours to supply the exact quantity of the Works ordered by the Customer, the Company may supply and the Customer will accept up to 5% more

or less than the exact quantity ordered. In such circumstances, the Company's invoice will reflect the delivered quantities.

- 4.9 The Customer (at its own expense) will ensure that the place where delivery of the Goods or performance of the Services is to take place is adequate and appropriate for such delivery or performance and will provide such access, equipment, facilities, protection, manual labour and information as may reasonably be required to enable the Company to perform its obligations under the Contract.

5 NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by or on behalf of the Company upon delivery shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery or shortfall of the Goods if the Customer fails to comply with its obligations under clause 4.9 or otherwise in connection with the Customer (or any person acting on its behalf) failing to comply with, or failing to procure compliance with, any other Condition.
- 5.3 The Company shall not be liable for any non-delivery or shortfall in quantity of Goods delivered unless the Customer gives written notice to the Company of such shortfall within 7 Working Days of delivery.
- 5.4 Any liability of the Company for non-delivery or any shortfall of the Goods shall be limited to making good the non-delivery or shortfall within a reasonable time, or (at the Company's option) issuing a credit note or refund at the pro rata contract rate against any invoice raised for, any Goods that were not delivered.

6 RISK AND OWNERSHIP

- 6.1 Unless otherwise agreed in writing the Goods are at the risk of the Customer from the time of delivery or deemed delivery to the Customer (as appropriate) and loading and off-loading (as appropriate) will be at the Customer's risk. Section 20(2) of the Sale of Goods Act 1979 will not apply.
- 6.2 Notwithstanding that risk in the Goods will pass to the Customer in accordance with the provisions of clause 6.1, ownership of the Goods (both legal and equitable) will only pass to the Customer (other than when ownership is properly vested in some other person by the operation of any statute) when the Company has received in full (in cash or cleared funds) all monies due to it from the Customer in respect of the Goods.
- 6.3 Until ownership of the Goods has passed to the Customer under clause 6.2, the Customer will:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) keep the Goods free from any charge, lien or other encumbrance;
 - (c) not destroy, deface or obscure any identifying mark on the Goods or their packaging;
 - (d) maintain the Goods in a satisfactory condition, insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company and on request produce such policy of insurance to the Company; and
 - (e) hold all proceeds of the insurance referred to in clause 6.3(d) on trust for the Company and not mix it with any other money or pay the proceeds into any overdrawn bank account.
- 6.4 The Customer may resell, use or otherwise dispose of the Goods before ownership has passed to it only if any such sale, use or disposition will be effected in the ordinary course of the Customer's business and will be a sale, use or disposition of the Company's property on the Customer's own behalf and the Customer will deal as principal.
- 6.5 If the Customer is in breach of the Contract, the Company may while the owner of the Goods (and without prejudice to any other rights it may have under or by virtue of these Conditions) demand the immediate return of the Goods at any time and the Customer

will forthwith comply with such demand and bear the expenses for such return.

- 6.6 The Customer grants to the Company (or its successors in title for the Goods) and their respective employees and agents an irrevocable licence to enter at any time any premises where the Goods are or may be situated for the purpose of inspecting or removing any such Goods the ownership in which has remained with the Company.

- 6.7 The Company will be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

- 6.8 The Goods will be deemed sold or used in the order delivered to the Customer.

7 PRICE AND PAYMENT

- 7.1 Unless otherwise agreed by the Company in writing, and subject to clause 7.2, the price for the Works shall be the price set out in the Order Acknowledgement ("**Price**").

- 7.2 The Company may, by notice to the Customer given no later than 48 hours before completion of the first delivery of the relevant order line, increase the Price to reflect any increase in the cost to the Company in connection with the Works including those due to:

- (a) any request by the Customer to change the delivery date, quantity, Specification or type of Works ordered;
- (b) any delay arising from the inaccuracy or inadequacy of, or failure to provide, requisite instructions or information reasonably required from the Customer by the Company to perform its obligations under the Contract;
- (c) any increase in the labour time required to provide the Works, including as a result of Customer supplied test or build times not being accurate, Customer test equipment failing, modifications or rework due to Customer or Company related issues, the Company having to split manufacturing batches due to Customer or Company Materials not being available at the required time;
- (d) any factor beyond the control of the Company, including, exchange rate fluctuations, increases in taxes, duties and other levies and increases in labour, insurance, overheads, packaging, Materials (including any commodities, components, raw materials, consumables and other goods required in connection with the Works) and other manufacturing, supply or delivery costs.

- 7.3 The Company will provide to the Customer supporting evidence of all Price variations which occur post Quotation and or Order Acknowledgement. The Customer agrees to amend its Purchase Order accordingly to reflect any variations made in accordance with clause 7.2.

- 7.4 The Company reserves the right to charge the Customer for any additional work undertaken over and above that which would have been otherwise required (including any expenses or financial penalties incurred by the Company) as a result of any instructions supplied by the Customer being incomplete, incorrect, inaccurate, illegible, out of sequence, in the wrong form or provided to the Company too late to meet a deadline.

- 7.5 Quotations given in a currency other than pounds sterling are based on the rate of exchange at the time of quoting and (unless otherwise agreed in writing between the parties) the Price may be subject to revision if any different rate of exchange is ruling at the date of invoice.

- 7.6 Unless otherwise agreed in writing, the Price for the Works is exclusive of any delivery charges.

- 7.7 Unless otherwise agreed, the Price for the Works is exclusive of any value added tax (and any other tax or duty relating to the manufacture, transportation, sale or delivery of the Works) and any costs or charges in relation to export and/or import, packaging, loading, unloading, carriage and insurance. Such costs and

expenses will be paid by the Customer when it is due to pay for the Works.

7.8 The Company may invoice the Customer for the Works at any time after the delivery of the Works or the delivery of any instalment (as appropriate). If any delivery is postponed at the request or by the default of the Customer then the Company may submit its invoice at any time after the Works are ready for delivery or would have been ready in the ordinary course but for the request or default on the part of the Customer.

7.9 Customers who have been granted by the Company (in its sole discretion) a credit account facility will, unless otherwise agreed in writing, pay the Price within 30 days of the end of the month in which the invoice is dated. The Company may (in its sole discretion) amend the terms of or withdraw such credit account facility at any time without notice with immediate effect and on such withdrawal all amounts due or accruing to the Company under the Contract will become immediately payable despite any other provision of these Conditions.

7.10 Customers who have not been granted a credit account facility will pay upon receipt of the Company's pro forma invoice.

7.11 Any queries or disputes from the Customer regarding any invoice must be received by the later of the required payment date and 14 days from the date of invoice.

7.12 No payment will be deemed to have been received until the Company has received cleared funds to a bank account nominated in writing by the Company.

7.13 All payments payable to the Company under the Contract will become due immediately on termination of this Contract despite any other provision of these Conditions.

7.14 The Customer will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless otherwise required by law.

7.15 Interest shall be payable on the late payment of payment of any amount properly due from the Customer to the Company accruing on a daily basis from the due date for payment until payment is made in full, both before and after any judgment, at a rate equal to the greater of 8% and 5% above the base lending rate of Barclays Bank Plc from time to time.

7.16 If the Customer fails to pay in full any undisputed invoice from the Company by the due date for payment or exceeds the maximum outstanding agreed credit facility and such sums remain outstanding after the Company has notified the Customer of the non-payment and the Customer has failed to remedy the non-payment within 14 days of the Company's written notice, then without prejudice to any other right or remedy the Company may have the Customer shall be entitled to:

- (a) cancel or suspend any orders for the provision of Works under the Contract until such time as all outstanding sums have been paid in full; and
- (b) by notice to the Customer unilaterally vary the Customer's available credit facility and payment terms for future Contracts.

8 QUALITY

8.1 The Customer warrants that the information provided to the Company (including the Specification) is accurate and correct.

8.2 Where the Company is the manufacturer of the Goods the Company warrants (subject to the provisions of this clause 8) that:

- (a) on delivery of the Goods, the Goods will (subject to clause 3.8) conform in all material respects with the Specification; and
- (b) for a period of 12 months from the date of delivery the Goods will be free from material manufacturing defects in workmanship.

8.3 The Company warrants that (subject to the provisions of this clause 8):

- (a) the Services will be performed with reasonable skill and care by properly qualified and experienced persons; and
- (b) where the Company is not the manufacturer of the Goods, the Company will use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to the Company. The Company is not responsible for any obligations under any such manufacturer guarantees.

8.4 The Customer acknowledges and agrees that it is exclusively responsible for the Specification and for determining the Goods' use and their ability to function for any particular purpose. Accordingly, the Company shall not be liable to the Customer for any advice given by Company to the Customer relating to its requirements in respect of any Goods, their use and or functionality.

8.5 Where the Company is the manufacturer of the Goods and/or the Company performs Procurement Services and in so doing identifies (and notifies the Customer) that the Goods do not comply with the Specification and notwithstanding this the Customer requests the Company to manufacture and/or purchase such Goods, then notwithstanding the other provisions of this clause 8, the Customer acknowledges and agrees that the Goods are supplied on an "as is" basis and:

- (a) the Company makes no warranty and, subject to clause 10.4, accepts no responsibility or liability of any kind in relation to the supply, quality or use of the Goods, including but not limited to warranties or conditions of fitness for purpose, quality or non-infringement of third party intellectual property rights;
- (b) subject to clause 10.4, all conditions, warranties or other terms which might have effect between the Company and the Customer or be implied or incorporated into the Contract, whether by statute, common law or otherwise are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care; and
- (c) in entering into the Contract, either the Customer did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in these terms and conditions or (if it did rely on any representations, whether written or oral, not expressly set out in these terms and conditions) that it shall have no remedy in respect of such representations and (in either case), subject to clause 10.4, the Company shall have no liability in any circumstances,

and the Customer shall not be relieved of its obligation to pay for the Goods by reason of them not complying with the Specification.

8.6 The Company will not be liable for any breach of any of the warranties in clause 8.2 or clause 8.3 unless:

- (a) the Customer gives written notice of the defect to the Company within 28 days of the date when the Customer discovers or ought reasonably to have discovered the defect;
- (b) (if the defect is as a result of damage in transit) the Customer gives written notice of the defect to the carrier in the manner and within the appropriate time limit as set out in the carrier's terms of business;
- (c) the Company is given a reasonable opportunity after receiving such notice to examine such Works and the Customer (if requested to do so by the Company) returns such Works to the Company's place of business (at the Customer's cost) for the examination to take place there; and
- (d) the Customer obtains a returns material authorisation number from the Company prior to returning any Goods to the Company pursuant to clause 8.6(c).

- 8.7 The Company will not be liable for a breach of any of the warranties in clause 8.2 or clause 8.3 where and to the extent that:
- (a) the defect arises where the Company has followed and complied with the Specification;
 - (b) the defect arises from any Customer Property (including Customer supplied components (free issued or sold)) or as a result of the Customer's negligence or breach of the Contract;
 - (c) the defect arises as a result of fair wear and tear, misuse, wilful damage, or abnormal working conditions;
 - (d) the defect arises as a result of any Materials or parts or equipment not manufactured or workmanship not performed by the Company;
 - (e) the Customer makes any further use of such Works after giving written notice of the defect;
 - (f) the defect arises because the Customer has failed to follow the Company's instructions (whether oral or in writing) as to the storage, assembly, installation, commissioning, use, processing, handling or maintenance of the Works or (if there are none) good trade practice;
 - (g) the defect arises as a result of any installation, testing or commissioning of the Works performed by the Customer or any third party; or
 - (h) the defect arises as a result of any alteration, servicing or repair of the Works not made by the Company.
- 8.8 Subject to clauses 8.4, 8.5, 8.6 and 8.7, if any of the Works do not conform with any of the warranties set out in clauses 8.2 and 8.3, the Company will at its option and cost either repair or replace such Goods (or the defective part), re-perform such Services or refund the Price of such Works at the pro rata Contract rate. If the Company complies with this clause 11.7, it will have no further liability (in contract, tort (including but not limited to negligence) or otherwise) for breach of any of the warranties in clauses 8.2 and 8.3 in respect of such Works.
- 8.9 Any Goods replaced by the Company in accordance with the provisions of clause 8.8 will belong to the Company and any repaired or replacement Goods will be subject to clause 8.2(b) for the unexpired portion of the 12-month period applicable to the Goods originally supplied.
- 8.10 Where the Company provides Procurement Services then the Company gives no warranty or other commitment that the Goods comply with the requirements of any applicable law or regulation, including but not limited to, UK Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals or the Restriction of the Use of Certain Hazardous Substances in Electrical Electronic Equipment Regulations and shall not be liable in any way to the Customer for any failure of such Goods to comply with any applicable law or regulation.
- 9 GOODS FOR DEVELOPMENT**
- 9.1 If Goods are samples or for development or testing, the Company makes no warranties of any kind or nature for such Goods and the Company expressly disclaims any and all warranties, whether express or implied (including Sections 13 – 15 of the Sale of Goods Act 1979), including, but not limited to, the warranty of merchantability satisfactory quality and the warranty of fitness for a particular purpose. Any such Works provided hereunder are provided "as is, with all faults". Notwithstanding any other provision in these Conditions, the Company has no obligation, liability or responsibility with regard to any sample, developmental or test goods supplied by the Company under any Contract.
- 10 LIMITATION OF LIABILITY**
- 10.1 All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.2 The Company shall be relieved from performing its obligations under the Contract in the event that it is prevented from doing so due to any event or circumstance outside of its reasonable control, or for any act or omission or instruction of, or withholding of consent or approval by, the Customer, its employees, agents, contractors, or customers.
- 10.3 The Company's liability in relation to the warranties given in clauses 8.2 and 8.3 shall be limited as provided in clause 8.8.
- 10.4 Nothing in these Conditions excludes or limits the liability of the Company for fraudulent misrepresentation or for any death or personal injury caused by the Company's negligence or by the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982.
- 10.5 Subject to clause 10.1, 10.3 and 10.4, the Company will not be liable to the Customer in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any:
- (a) loss of profit, income or revenue;
 - (b) loss of business, agreements or contracts or opportunities;
 - (c) depletion of, or damage to, goodwill or reputation;
 - (d) loss of savings or anticipated savings;
 - (e) wasted expenditure;
 - (f) loss of use or corruption of software, data or information; or
 - (g) any special, indirect or consequential loss or damage, (even if the Company has been advised of such loss or damage) arising out of or in connection with the Contract.
- 10.6 Nothing in this clause 10 shall limit or exclude:
- (a) the Customer's payment obligations under the Contract; or
 - (b) the Customer's liability under any indemnity.
- 10.7 Subject to the provisions of clause 10.3, 10.4, 10.5, 10.6, 10.8 and 10.9, each party's total liability arising out of or in connection with the Contract will be limited to the Price.
- 10.8 For the purposes the Company's liability under clause 10.7, where the Purchase Order relates to a number of sets of Goods, the Price shall only be the Price attributable to those particular Goods in respect of which there is a breach of any of the warranties in clauses 8.2 and 8.3 and shall not be the aggregate price applicable to all the Goods which are the subject of the Contract.
- 10.9 For the purposes the Company's liability under clause 10.7, where the Purchase Order relates to a series of discrete Services, the Price shall only be the Price attributable to those particular Services in respect of which there is a breach of any of the warranties in clauses 8.2 and 8.3 and shall not be the aggregate Price applicable to all the Services which are the subject of the Contract.
- 10.10 Any claim(s) by the Customer in respect of any Goods shall not entitle the Customer to withhold or delay payment in respect of any other Goods or Services in respect of which no such claim has been made, whether or not those Goods or Services form part of an instalment.
- 11 CUSTOMER PROPERTY**
- 11.1 While the Company will take reasonable care of the Customer Property whilst it is in the Company's possession, control or custody, the Customer Property will (unless otherwise agreed in writing) remain at the Customer's risk and all replacements and alterations of and repairs to the Customer Property will be the Customer's responsibility.
- 11.2 The Company will not be liable for any loss or damage to the Customer Property unless such loss or damage arises as a direct

result of the Company's negligence. Where the Company is liable under this clause 11.2, the Company's liability to the Customer will be limited to the actual cost of the replacement or repair of the Customer Property (as the case may be).

- 11.3 The Customer will ensure that the Customer Property is in good condition and suitable for use by the Company in the performance of the Contract and while the Company will use reasonable endeavours to verify any relevant aspects of the Customer Property no responsibility is accepted by the Company for its accuracy.
- 11.4 Any defect in the Works which is due in whole or in part to the Customer Property will not entitle the Customer to terminate the Contract, reject the Works, make any deductions from the Price or claim damages in respect of such defect.
- 11.5 The Customer will keep the Company indemnified in full against all liability, loss, damage, injury, claim, action, demand, expense or proceeding awarded against or incurred by the Company as a result of or in connection with the use by the Company of the Customer Property save to the extent such liability, loss, damage, injury, claim, action, demand, expense or proceeding is the result of the Company's negligent acts or omissions.

12 TOOLING

- 12.1 Unless otherwise agreed by the parties in writing, Tooling will be charged to the Customer as a non-recurring expense.
- 12.2 If the Company agrees to construct or acquire Tooling for use exclusively in the production of Goods for supply to the Customer under the Contract to be separately charged to the Customer in full ("**Funded Tooling**"), then the Customer will purchase the Funded Tooling from the Company for the amount stated in the Order Acknowledgement, or if no amount is stated, the amount notified by the Company. Upon payment in full for such Funded Tooling, title shall vest in the Customer.
- 12.3 The Company shall have no responsibility to maintain the Funded Tooling unless the scope of Services and associated charges for such maintenance Services have been agreed by the parties in writing.
- 12.4 When for 6 months the Customer places no Purchase Orders with the Company for Goods to be produced using the Tooling or Funded Tooling, then the Company may, by written notice to the Customer at the Customer's last known address, notify the Customer of the Company's intent to dispose of such Tooling or Funded Tooling. If the Customer fails to:
- (a) place a Purchase Order with the Company for Goods to be produced using such Tooling or Funded Tooling; or
 - (b) arrange for the transfer (at the Customer's own cost) of any Funded Tooling,

in both cases within 30 days of such notice, then the Company may dispose of such Tooling or Funded Tooling (if permitted by law) in its sole discretion without liability to the Customer.

13 CONFIDENTIALITY

- 13.1 Each party will keep confidential all technical data, commercial information, know-how, specifications, inventions, processes, initiatives and other information which is of a confidential nature and which has been disclosed to it by the other party or its agents and any other confidential information concerning the other party's business or its products which it may obtain as a result of the Contract ("**Confidential Information**").
- 13.2 Each party will restrict disclosure of the Confidential Information to such of its employees, agents or subcontractors as need to know the same and will ensure that such employees, agents or subcontractors are subject to equivalent obligations of confidentiality as bind it.
- 13.3 Neither party will without the prior written consent of the other publish or disclose the Confidential Information to any third party

or make any use of the Confidential Information except to the extent necessary to implement the Contract.

14 INTELLECTUAL PROPERTY

- 14.1 All rights, including any copyright or other Intellectual Property Rights, in and to any Company Materials and any manufacturing processes used or developed by the Company shall, unless otherwise agreed in writing between the Customer and the Company, belong to the Company, subject only to a non-exclusive, royalty-free licence in favour of the Customer to use the Company Materials for the purposes of receiving the Works.
- 14.2 All rights, including any copyright or other Intellectual Property Rights, in the Specification and any Customer Property shall, unless otherwise agreed in writing between the Customer and the Company, belong to the Customer, subject only to a non-exclusive, royalty-free licence in favour of the Company to use the Customer Property for the purposes of supplying the Works.
- 14.3 The Customer shall indemnify and keep indemnified the Company in full and hold it harmless on demand from and against any and all Losses suffered or incurred by the Company or for which the Company may become liable arising out of or in connection with any claim made against the Company for alleged or actual infringement of a third party's Intellectual Property Rights in connection with the Company's use of the Customer Property (including where the Works are to be provided to a Specification provided by the Customer). This clause 14.3 shall survive termination of the Contract.
- 14.4 Nothing in these Conditions will be construed as any representation or warranty by the Company that the design, manufacture, use or sale of the Works is not an infringement of any third party intellectual property rights.

15 TERMINATION

- 15.1 Either party may terminate the Contract immediately by notice in writing to the other party if:
- (a) the other party is in breach of any term of the Contract and has failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied; or
 - (b) the other party is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment, or the presentation of a petition for the appointment of, an administrator or any equivalent or analogous event occurs in any other jurisdiction.
- 15.2 The Company may terminate the Contract immediately if:
- (a) the Customer fails to pay in full any undisputed invoice from the Company by the due date for payment or exceeds the maximum outstanding agreed credit facility and such sums remain outstanding after the Company has notified the Customer of the non-payment and the Customer has failed to remedy the non-payment within 30 days of the Company's written notice; or
 - (b) there is a change of Control of the Customer.
- 15.3 On suspension, cancellation or termination of the Contract or any part of it for any reason:
- (a) the Customer shall immediately pay to the Company all outstanding invoices and in respect of any other sums payable by the Customer but for which no invoice has been submitted, the Company may submit an invoice which shall be payable immediately upon receipt;
 - (b) the Customer shall purchase all Goods ordered by the Customer at the time of such termination or expiry of the Contract;
 - (c) the Customer shall reimburse the Company for all Materials, work-in-progress, and costs incurred or committed to by the Company up to the termination date at the Company's sales

prices, in line with Customer forecasts if provided by the Customer;

- (d) the Company may charge a reasonable sum to cover its costs for providing co-operation and assistance provided to the Customer arising from termination of the Contract;
- (e) each party shall return, delete or destroy all confidential information and all other information which has been provided to it by the other party belonging to that party in whatever medium, in accordance with the instructions of that party.

15.4 The termination of the Contract (howsoever arising) will be without prejudice to any rights and remedies which may have accrued to either party.

15.5 Any Conditions which impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination or expiry.

16 EXPORT SALES

16.1 Where the Works are supplied for export from the United Kingdom the provisions of this clause 16 will (subject to any special terms agreed in writing between the parties) apply despite any other provision of these Conditions.

16.2 The Uniform Laws on International Sales Act 1967 will not apply.

16.3 Unless otherwise agreed in writing the currency will be pounds sterling.

16.4 Unless otherwise stated on the Order Acknowledgement or agreed in writing between the parties, the Works will be sold Ex Works (as defined in the international rules for the interpretation of trade terms of the International Chamber of Commerce (Incoterms) which are in force at the date when the Contract is made).

16.5 The Customer will be responsible for complying with any legislation or regulation governing the export of the Works from the United Kingdom and the importation of the Works into the country of destination and for payment of any relevant duties or taxes.

17 LIEN

17.1 The Company will have in respect of unpaid debts due to it from the Customer a general lien on all property of the Customer which is in the Company's possession for whatever reason and whether worked upon or not.

18 ASSIGNMENT AND SUBCONTRACTING

18.1 The Customer will not without the prior written consent of the Company assign or transfer the Contract or any part of it to any other person.

18.2 The Company may with prior notification to the Customer assign, transfer or subcontract the Contract or any part of it to any of its Affiliates.

19 FORCE MAJEURE

19.1 Neither party shall be liable for any delay or non-performance and the time for performance of the affected obligation shall be extended by such period as is reasonable to enable the party, using reasonable endeavours, to perform that obligation, if the party is hindered, delayed or prevented in the performance of any of its obligations under the Contract by an event, circumstance or cause beyond its reasonable control (including war or other armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, national or international emergency or calamity, strikes, lock-outs or other industrial disputes (whether involving its own workforce or any third party's), failure of energy supply, disruption to transport, non-availability or shortage of materials, commodity supplies, data, fuel, electricity and/or water, delay due to any actions or omissions by any public services or government authorities, sanctions, blockade, embargo, prohibition on exportation or importation of material or equipment or services and any other action or failure to act of public services or government authorities, malicious damage, breakdown of plant or machinery,

nuclear, chemical or biological contamination, sonic boom, explosions, collapse of buildings or other structures, fires, floods, storms, earthquakes, natural disasters, extreme adverse weather conditions, acts of God, loss at sea, epidemics or similar events and default of suppliers or sub-contractors caused by any such event), but excluding the Customer's payment obligations.

19.2 If the performance of any of the Company's obligations under the Contract is hindered, delayed or prevented as described in clause 19.1 for a continuous period of 1 month, the Company may, without liability to the Customer, terminate the Contract with immediate effect by giving notice to the Customer.

20 COMPLIANCE

20.1 The Company and the Customer each warrants to the other that:

- (a) in the negotiation of the Contract it has complied, and in the performance of the Contract it will comply, with all applicable laws and regulations relating to anti-bribery, anti-tax evasion facilitation and anti-corruption including, but not limited to, the Bribery Act 2010, the Modern Slavery Act 2015 and the Criminal Finances Act 2017 (the "Relevant Requirements");
- (b) it has, and will maintain in place throughout the term of the Contract, policies and adequate procedures under the Bribery Act 2010, the Modern Slavery Act 2015 and the Criminal Finances Act 2017, to ensure compliance with the Relevant Requirements and will enforce those policies and procedures where appropriate; and
- (c) it will promptly report to the other any request or demand for, or offer of, any undue financial or other advantage of any kind received by it in connection with the performance of the Contract.

21 GENERAL

21.1 Each right or remedy of the Company under these Conditions is without prejudice to any other right or remedy which the Company may have under these Conditions or otherwise.

21.2 Any notice or document shall be deemed served, if delivered by hand, at the time of delivery, if posted, 48 hours after posting and if sent by email transmission, at the time of transmission PROVIDED that any notice under clause 15 may only validly be given if delivered by hand or if posted.

21.3 The illegality, invalidity or unenforceability of any provision of these Conditions will not affect the legality, validity or enforceability of any other provisions of these Conditions.

21.4 Failure or delay by either party in exercising any right or remedy provided by the Contract or by law will not be construed as a waiver of such right or remedy or a waiver of any other right or remedy.

21.5 A person who is not a party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause 21.5 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

21.6 The Customer agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of the Company prior to the Contract upon which the Customer relied in entering into the Contract whether such statement was made orally or in writing.

21.7 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

21.8 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

END.