

## Prime Power Solution Limited

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# TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

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**PART 1 : INTERPRETATION, OBLIGATIONS AND COMMENCEMENT**

**1. Interpretation**

1.1. In these Terms the following words and expressions shall have the following meanings unless inconsistent with the context:

| <b>Term</b>                     | <b>Meaning</b>  |
|---------------------------------|---|
| <b>Company</b>                  | Prime Power Solution Limited, a company registered in England and Wales with company number 7193695 and whose registered office is at 61 Mosley Street, Manchester M2 3HZ, United Kingdom   |
| <b>Customer</b>                 | The person, firm, company or other body who purchases the Goods or Services from the Company.   |
| <b>Affected Party</b>           | a party affected by a Force Majeure Event who serves a notice to that effect in accordance with these Terms.  |
| <b>Applicable Law</b>           | any applicable statute, ordinance, Act or other rule, regulation or by-law or any rule, code or direction having a force of law or any regulatory licence, consent permit authorisation or other approval including any conditions attached.  |
| <b>Bank</b>                     | Barclays Bank plc   |
| <b>Change of Control</b>        | any event where the Customer becomes a Subsidiary of any other company other than that which results in control passing to a company, that immediately prior to the change in question, was an affiliate of the Customer.   |
| <b>Commencement Date</b>        | the date set out at the head of these Terms.  |
| <b>Company Representative</b>   | Staff employed by the Company   |
| <b>Customer's Staff</b>         | Staff engaged by the Customer.  |
| <b>Terms</b>                    | the standard terms and conditions of supply contained in these Terms, as amended, supplemented or novated from time to time, and including the Schedules to these Terms, and, unless the context otherwise requires, including any special terms and conditions agreed in writing between the Company and the Customer  |
| <b>Confidential Information</b> | information marked "confidential" or which may reasonably be supposed to be confidential that may become known to the Customer from the Company or the Company's Group and which relates to the Company or the Company's Group, including without limitation any information : <ul style="list-style-type: none"> <li>▪ of a confidential nature (including trade secrets and information of commercial value); or</li> <li>▪ relating to the operation of a Contract; or</li> <li>▪ relating to the business, affairs, other customers, clients, suppliers, plans, operations, intentions or market opportunities of the Company or of the Company's Group; or</li> <li>▪ concerning the existence and provisions of these Terms.</li> </ul> |
| <b>Confidentiality Period</b>   | the period from the Commencement Date until a period of <b>5 years</b> after the termination of these Terms.  |

| <b>Term</b>                                 | <b>Meaning</b>   |
|---|--|
| <b>Consumer Consequences of Termination</b> | The meaning in the unfair Terms in Consumer Contracts Regulations 1999 those consequences set out at <b>Part 9</b> .   |
| <b>Contract</b>                             | Any contract between the Company and the Customer for the sale and purchase of the Goods or services, incorporating these Terms  |
| <b>Day</b>                                  | a period of 24 hours.  |
| <b>Dispute</b>                              | a dispute notified by one party to the other in writing and stated as being a dispute.   |
| <b>Delivery Point</b>                       | The Company's place of business, unless agreed otherwise   |
| <b>Dispute Resolution Procedure</b>         | the procedure for resolving Disputes set out at Part <b>10</b> .   |
| <b>Force Majeure Event</b>                  | <ul style="list-style-type: none"> <li>▪ any Act of God including but not limited to fire, flood, explosion, earthquake, windstorm or other natural disaster; or</li> <li>▪ any act of any sovereign power including but not limited to war, threat of or preparation for war, armed conflict, invasion, act of foreign enemies, hostilities (whether war be declared or not) ; or</li> <li>▪ terrorist attack, civil war, rebellion, revolution, insurrection, military or usurped power; or</li> <li>▪ confiscation, nationalisation, requisition, destruction, or damaged property by or under the order of any government or public or local authority; or</li> <li>▪ imposition of government sanction, embargo, the breaking off of diplomatic relations or similar action; or</li> <li>▪ law, judgment, order, decree; or</li> <li>▪ embargo, blockade, labour dispute (other than a dispute induced by the party so incapacitated) including but not limited to strike, lockout or boycott; or</li> <li>▪ interruption or failure of utility service including but not limited to electric power, gas, water or telephone service; or</li> <li>▪ failure of the transportation of any personnel equipment, machinery supply or material required by a party for these Terms; or</li> <li>▪ nuclear, chemical or biological contamination or sonic boom; or</li> <li>▪ breach of contract by any essential personnel; or</li> <li>▪ any other matter or cause beyond the reasonable control of a party claiming to be affected by such an event.</li> </ul> |
| <b>Force Majeure Period</b>                 | 60 days.   |
| <b>Goods</b>                                | any goods agreed in the Contract to be supplied by or on behalf of the Company to a Customer   |
| <b>Group</b>                                | in relation to a company, that company, any company of which it is a Subsidiary (its holding company), and any other Subsidiary of such holding company; and each company in a group is a member of the group. Unless the context requires otherwise, the application of the definition of Group to any company at any time shall apply to the company as it is at that time.  |

| Term                    | Meaning  |
|-------------------------|--|
| <b>INCOTERMS</b>        | the international rules for the interpretation of trade terms of the International Chambers of Commerce as in force at the date when the Contract is made.   |
| <b>Insolvency Event</b> | <ul style="list-style-type: none"> <li>▪ becoming unable to pay its debts as and when they fall due, within the meaning of Section 518 of the Companies Act 1985 or being deemed so within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>▪ going into liquidation either compulsory or voluntarily (save for the purpose of a bona fide reconstruction or amalgamation) ; or</li> <li>▪ commencing negotiations with all or any class of its creditors with a view to rescheduling any of its debts; or</li> <li>▪ convening a meeting of creditors (whether formal or informal); or</li> <li>▪ having a petition presented, resolution passed, or order made, convening a meeting for the purpose of passing a resolution, or any analogous proceedings are taken for its winding-up, administration or dissolution ; or</li> <li>▪ having a liquidator, administrator, administrative receiver or receiver appointed in respect of the whole or any substantial part of its assets or undertakings; or</li> <li>▪ having a creditor or encumbrancer attaching or taking possession of, or a distress, execution, sequestration or such other process being levied or enforced on or sued against, all or any part of its business or assets and such attachment or process not being discharged within 14 days ; or</li> <li>▪ taking the benefit of any statutory provision for the time being in force for the relief of insolvent debtors; or</li> <li>▪ (where the Customer is an individual) having a bankruptcy, order made against the Customer; or</li> <li>▪ (where the Customer is a firm) a partner in the Customer becoming subject to any of the matters listed in this definition Event; or</li> <li>▪ proposing or making any arrangement or composition with, or any assignment for the benefit of, its creditors; or</li> <li>▪ becoming subject to any analogous event or proceedings to those above in any applicable jurisdiction; or</li> <li>▪ threatening to do any of the events listed above.</li> </ul> |
| <b>Insurance Policy</b> | <ul style="list-style-type: none"> <li>▪ policy or policies of insurance with policy limits and provisions conforming to such requirements as the Company may from time to time prescribe which is</li> <li>▪ effected by the Customer in accordance with these Terms; and</li> <li>▪ upon customary and usual terms and conditions prevailing for the time being in the insurance market; and</li> <li>▪ with reputable insurers lawfully carrying on such insurance business in the United Kingdom; and</li> <li>▪ for any one occurrence or series of occurrences arising out of any one</li> </ul>   |

| Term                          | Meaning  |
|-------------------------------|--|
| <b>Interest Rate</b>          | <p>event.</p> <p>the higher of:</p> <ul style="list-style-type: none"> <li>▪ 3% above the then daily base lending rate of the Bank; or</li> <li>▪ 8% per year.</li> </ul>  |
| <b>IPR</b>                    | <p>all vested contingent and future intellectual property rights including but not limited to copyright, trademarks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration of these rights and all renewals and extensions, existing in any part of the world whether now known or in the future created to which party claiming IPR may be entitled.</p>   |
| <b>Judgment Limit</b>         | <p>£100,000,00 (ONE HUNDRED THOUSAND POUNDS).</p>  |
| <b>Liabilities</b>            | <p>Losses, proceedings, claims, demands, liabilities, charges, costs and expenses, including legal and professional fees, incurred by the Company, all other companies within the Company's Group, and the Staff of the Company, whether incurred in connection with a third party claim or otherwise.</p>   |
| <b>Losses</b>                 | <p>indirect or consequential loss, loss of use, loss of data, loss of revenue or anticipated profits, loss of business loss of or damage to property both real and personal, loss of profit or contracts, loss of income or opportunity, loss of goodwill or injury to reputation, losses suffered by third parties, wasted management or office time, special or exemplary damages or any other loss or damage of any kind, however arising and whether caused by tort (including negligence), breach of contract or otherwise, even if foreseeable</p> |
| <b>Month</b>                  | <p>a calendar month.</p>   |
| <b>Notice Period</b>          | <p>6 months (SIX MONTHS).</p>  |
| <b>Services</b>               | <p>any services agreed in the Contract to be supplied by or on behalf of the Company to a Customer</p>   |
| <b>Staff</b>                  | <p>any employee and other persons paid for his or her labour, including agents, contractors and sub-contractors, officers, directors, consultants and members.</p>   |
| <b>Subsidiary</b>             | <p>has the meaning given in section 736 of the Companies Act 1985. Unless the context requires otherwise:</p> <ul style="list-style-type: none"> <li>▪ the application of the definition of Subsidiary to any company shall apply to the company as it is at that time; and</li> <li>▪ references to Subsidiary are references to a Subsidiary of the company.</li> </ul>  |
| <b>Termination Date</b>       | <p>the date on which these Terms is terminated in accordance with the Termination Provisions.</p>  |
| <b>Termination Provisions</b> | <p>the provisions set out in <b>Part 8</b>.</p>  |
| <b>Unaffected Party</b>       | <p>A party who is served with a notice from an Affected Party.</p>   |
| <b>VAT</b>                    | <p>Value Added Tax.</p>  |

| Term | Meaning |
|------|---------|
|------|---------|

|                |   |
|----------------|---|
| <b>Writing</b> | and any similar expression, includes facsimile and other electronic transmission including email. |
| <b>Year</b>    | a calendar year.  |

1.2. In these Terms unless the context otherwise requires :

- 1.2.1. references to a party include a person:
  - 1.2.1.1. who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under these Terms (or any interest in those rights); or
  - 1.2.1.2. who, as administrator, liquidator or otherwise is entitled to exercise those rights; or to whom those rights (or interest in those rights) are transferred or passed as a result of a merger, division, reconstruction or other reorganisation involving that party.
- 1.2.2. references to :
  - 1.2.2.1. any gender includes all genders;
  - 1.2.2.2. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - 1.2.2.3. an English legal term for any action, remedy, method of judicial proceeding, enforcement, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction;
  - 1.2.2.4. any phrase introduced by the terms 'including', 'include', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
  - 1.2.2.5. a party's rights under these Terms include any similar rights to which another person becomes entitled as a result of a novation of these Terms;
  - 1.2.2.6. numbered clauses or schedules are references to the relevant clause in or Schedule to these Terms; and
  - 1.2.2.7. numbered paragraphs in any Schedule to these Terms relate to the numbered paragraphs of that schedule
- 1.2.3. words in the singular include the plural and vice versa.
- 1.2.4. where any obligation is to be undertaken by two or more persons jointly they are to be jointly and severally liable in respect of that obligation.
- 1.2.5. any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done.
- 1.2.6. any party who agrees to do something shall be deemed to fulfil that obligation if that party procures that it is done.
- 1.2.7. the headings in these Terms are used for the convenience of the parties only, shall not be incorporated into these Terms and shall not be deemed to be any indication of the meaning of the clauses, schedules or exhibits to which they relate.
- 1.2.8. any reference to an enactment, including statutes or statutory provisions, includes a reference to:-
  - 1.2.8.1. that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated; and
  - 1.2.8.2. or Statutory Instruments or Orders made pursuant to it.
- 1.3. The schedules to these Terms are and shall be construed as being part of these Terms.
- 1.4. In the event of any conflict between the terms and conditions of these Terms and of any provision in any schedule, the terms and conditions of these Terms shall prevail.



## **2. Application of these Terms**

- 2.1. Subject to any variation under sub-clause 3 below or other amendments permitted in accordance with these Terms, any Contract shall be on these Terms to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2. No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3. Any variation to these Terms and any representations about the Goods shall have no effect unless made in accordance with this Agreement.
- 2.4. Each order or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods subject to these Terms.
- 2.5. No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Customer.
- 2.6. The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7. Any quotation given, for the supply of Goods or Services is:
  - 2.7.1. made, on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order, and signed by a duly authorised officer of the Company to the Customer.
  - 2.7.2. valid for a period of 30 days only from its date, unless withdrawn by the Company earlier
  - 2.7.3. a quotation only for the Goods or Services actually specified. The Company does not accept that any obligations are to be implied by the quotation

## **3. Basis of the sale and supply**

- 3.1. The Company shall sell and the Customer shall purchase any Goods or Services in accordance with the Contract.
- 3.2. These Terms shall apply to the Contract and to all subsequent contracts between the Company and that Customer unless the Company gives notice to the Customer that any revised terms apply, in which case the revised terms shall apply from the date of actual or deemed notice, whichever is the earliest, unless otherwise stated.

## **PART 2 : THE GOODS**

### **4. Description of the Goods and Services**

- 4.1. The quantity and description of the Goods or Services shall be as set out in the Company's quotation or acknowledgement of order.
- 4.2. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They shall not form part of the Contract and this is not a sale by sample.
- 4.3. The Company reserves the right to make changes in the specification in the Goods or services which:
  - 4.3.1. are required to conform with any applicable safety or other statutory requirements; or
  - 4.3.2. which otherwise do not materially affect their quality or performance (where the Goods are to be supplied to the Company's specification),.
- 4.4. Any description of Goods (by reference to any part number(s) appearing in the Company's standard catalogue) set out in any quotation issued by the Company shall be deemed to comply with the Contract if the description complies with the Company's specifications for the goods sold under such part number current as at the Time of Delivery.

### **5. Quality of the Goods and Services**

- 5.1. Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.
- 5.2. The Company warrants that (subject to the other provisions of these Terms) on delivery, and for a period of 12 months from the date of delivery, the Goods shall:
  - 5.2.1. be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
  - 5.2.2. be reasonably fit for [PURPOSE]; and
  - 5.2.3. be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company.
- 5.3. The Company shall not be liable for a breach of any of the warranties listed in the sub-clause above unless:
  - 5.3.1. the Customer gives written notice of the defect to the Company; within 14 days of the time when the Customer discovers or ought to have discovered the defect; and
  - 5.3.2. the Company is given a reasonable opportunity after receiving the notice of examining such Goods.
  - 5.3.3. and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business (or such other places as may be nominated by the Company) at the Company's cost for the examination to take place there.
- 5.4. The Company shall not be liable for a breach of any of the warranties in the sub-clause 2 above if:
  - 5.4.1. the Customer makes any further use of such Goods after giving such notice; or
  - 5.4.2. the defect arises because the Customer failed to follow the Company'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; or
  - 5.4.3. the Customer alters or repairs such Goods without the written consent of the Company.
- 5.5. Subject to the sub-clauses above, if any of the Goods do not conform with any of the warranties in this clause the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate PROVIDED that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.
- 5.6. If the Company complies with the above sub-clause it shall have no further liability for a breach of any of the warranties in subclause 2 above in respect of such Goods.
- 5.7. Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on any terms, in this clause for the unexpired portion of the [12] month period.

### **PART 3: PRICE AND PAYMENT**

#### **6. Price of the Goods and Services**

- 6.1. Unless otherwise agreed by the Company in writing, the price for the Goods or Services shall be:
  - 6.1.1. the price set out in any quotation issued to the Customer by the Company in respect of the goods or Services; or (if no quotation was issued or any quotation has expired); then
  - 6.1.2. the price set out in the Company's relevant price list published on the date of delivery or deemed delivery (whichever is latest). Where any Goods are supplied for export from, or any Services are to be supplied outside, the United Kingdom, the relevant price list may be the Company's export price list, if any.
- 6.2. **The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods.**
- 6.3. The Company may, by giving notice to the Customer at any time before delivery of the Goods or commencement of the Services, increase the price of the Goods or Services :to reflect

- 6.3.1. any increase in the costs to the Company of providing the Goods or Services which is due to any Force Majeure Event, including, but not limited to, any increase in duties, significant increase in the cost of labour, services or materials or other cost of manufacture or currency fluctuations; and
- 6.3.2. any changes in delivery dates, quantities or specifications for the Goods or Services which are requested by the Customer; and
- 6.3.3. any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 6.4. Where the above clause applies, the Customer shall have the right to terminate the Contract PROVIDED THAT :
  - 6.4.1. the Customer is purchasing the Goods or Services as a Consumer; and
  - 6.4.2. the Company gives notice under these Terms at any time before delivery of an increase in the price of the Goods or Services; and
  - 6.4.3. the amount of the increase is more than 10% of the original price; and
  - 6.4.4. the Customer serves a notice of cancellation on the Company not more than 7 days after the date on which the Customer actually receives or is deemed to receive the notice of increase in price (whichever is the latest)
- 6.5. **Except as otherwise agreed in writing between the Company and the Customer all prices are given by the Company on an ex-works basis and where the Company agrees to arrange for physical delivery of the Goods to the Customer or to any place nominated by the Customer the cost of delivery including carriage, packaging, insurance and offloading of the goods shall be payable by the Customer in addition to the price for the goods**
- 6.6. **The cost of pallets and returnable containers will be charged to the Customer in addition to the price of the Goods but full credit will be given to the Customer provided that they are returned undamaged to the Company before the due payment date**

## 7. Payment

- 7.1. The time for payment shall be of the essence of the Contract.
- 7.2. Unless agreed otherwise, and subject to the sub-clauses below, payment of the price for the Goods or Services is due in pounds sterling :
  - 7.2.1. on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered; **OR**
  - 7.2.2. within 28 days of the date of an invoice issued by the Company for the supply of the Goods or Services.
- 7.3. No payment shall be deemed to have been received until the Company has received cleared funds.
- 7.4. All payments payable by the Customer to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 7.5. The Customer shall, if the Company so requests, make payments on account of the cost of components or materials supplied to the Company in connection with the production and supply of the Goods or Services within 14 days of the date of such a request by the Company for a payment on account.
- 7.6. **Payment for any Goods (credit being duly allowed for any sums received pursuant to Condition 4.2) shall be made in cash and when the Goods are ready for collection ex-works from the Company's premises except where (prior to the date of the Contract) the Company shall have agreed in writing to allow credit to the Customer. In cases where credit has been so agreed the Customer shall pay the price of the Goods within the time stipulated in the Terms for credit notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer**
- 7.7. The Customer shall pay the price of the Goods in accordance with this clause in default of which the Company may maintain an action for the price against the Customer

## **8. VAT**

8.1. any sum referred to in these Terms or any Contract payable by one party to the other shall be exclusive of VAT which shall where it is chargeable be paid, at the rates then prevailing, in addition to the sum in question at the time when the sum in question is due to be paid.

## **9. Set-offs**

9.1. Unless specifically authorised under these Terms or otherwise agreed, all amounts due from the Customer to the Company under these Terms shall be paid in full without any deduction or withholding other than as required by law, whether by way of set-off, counterclaim, discount, abatement or otherwise.

9.2. The Company shall have the right to set-off against any payment to be made by it to the Customer under these Terms any and all liabilities of the Company or any member of the Company's Group to the Customer.

9.3. The company shall have the right to withhold payment due to be made by it to a Customer during any time that the Company has any actual or prospective claim of any nature against the Customer.

## **10. Late payment**

10.1. If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Company the Company shall be entitled to

10.1.1. cancel the Contract or suspend any further deliveries of Goods or supply of Services to the Customer; and

10.1.2. repossess the Goods in the manner stipulated in these Terms and resell the Goods; and

10.1.3. appropriate any payment by the Customer to any debt due from the Customer to the Company however long-standing as the Company may in its absolute discretion think fit notwithstanding any purported appropriation by the Customer; and

10.1.4. charge the Customer interest (both before and after any judgment) on the amount unpaid at the Interest Rate from the due date to the date of payment

10.2. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

10.3. The Customer undertakes to pay such interest chargeable under this clause whether or not a formal demand for the same has been made.

## **PART 4 : DELIVERY**

### **11. Place of delivery**

11.1. Delivery of the Goods shall take place at the Delivery Point.

11.2. Where the Company agrees to arrange for the physical delivery of the Goods to the Customer or to any place nominated by the Customer the Company shall make delivery by the Company delivering the Goods to such place and by such method as the Company deems fit

11.3. The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

### **12. Time of delivery**

12.1. Any dates given by the Company for delivery, commissioning or installation of the Goods or the commencement of Services are estimates only and in no circumstances shall the Company be liable for any delay in delivery or performance howsoever arising. If no dates are so specified, delivery shall be within a reasonable time.

12.2. Time for delivery shall not be of the essence of the Contract and time for delivery shall not be made of the essence by notice, unless previously agreed by the Company in writing.

- 12.3. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 12.4. Where the Delivery Point provided for by these Terms (or otherwise agreed between the parties) is:
- 12.4.1. the Company's place of business, the Time of Delivery shall be the date of actual or deemed receipt by the Customer of a notice from the Company informing the Customer that the Goods are available for collection; or
  - 12.4.2. at any other place, the Time of Delivery shall be the earliest of the date when the Company has tendered physical delivery at that other place or to a carrier.

### **13. Delivery by instalments**

- 13.1. The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 13.2. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 13.3. If any Goods are to be delivered in instalments, then :
- 13.3.1. each delivery shall constitute a separate contract;
  - 13.3.2. where, for any reason, the Company considers that it is unable to make a complete delivery of any instalment, the Company may delay such delivery or make such partial delivery on one or more occasions as it considers possible and the Customer's obligations to pay shall be correspondingly delayed or as the case may be proportionately reduced; and
  - 13.3.3. failure by the Company to deliver any one or more of the instalments in accordance with these Terms or any claim by the Customer in respect of any one or more such instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 13.4. If the Company fails to deliver the Goods for any reason other than a Force Majeure Event or the Customer's fault and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer in the cheapest available market of similar goods to replace those not delivered over the price of the Goods
- 13.5. Where payment is to be made to the Company by instalments each instalment shall be treated as a balance due under a separate contract
- 13.6. If any payment for any instalment in respect of any Contract is in arrears the Company may, without prejudice to any other right or remedy available to the Company, at any time while such arrears continues withdraw from further performance until the same is paid together with interest in full up to the date of payment and may commence proceedings to recover the same .

### **14. The Company's liability for delayed delivery**

- 14.1. Subject to the other provisions of these conditions the Company shall not be liable for any Losses caused directly or indirectly by any delay in the delivery of the Goods or the supply of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds [180] days.

### **15. The Customer's failure to accept delivery**

- 15.1. If for any reason, other than a Force Majeure Event or by reason of the Company's fault, the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then, without prejudice to any other right or remedy available to the Company:

- 15.1.1. risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
- 15.1.2. the Goods shall be deemed to have been delivered; and
- 15.1.3. the Company may store the Goods until physical delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

**16. Liability for non-delivery**

- 16.1. The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 16.2. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 14 days of the date when the Goods would in the ordinary course of events have been received.
- 16.3. Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

**17. Quantity and shortages**

- 17.1. If the Customer notifies the Company in writing received by the Company within the period set out in the sub-clause below of any shortages and the Company is satisfied that such shortages occurred before dispatch then the Company will make good the shortage at its own costs within such times as may be reasonable for the Company having regard to its commitments or at the option of the Company reduce the price by the price of the Goods not delivered.
- 17.2. The period of notification to be given to the Company is :
  - 17.2.1. in the case of export sales :
    - 17.2.1.1. in the case of Goods sent by air or sea within 21 days of the date when the Goods are offloaded into the country where the same are to be delivered; or
    - 17.2.1.2. in all other cases other than those in the sub-clause above, within 21 days of the date when the Goods cross the frontier of the country where the same are to be delivered; or
  - 17.2.2. in all other cases apart from export sales, 21 days of the Delivery Date of the Goods.
- 17.3. In no other circumstances shall the Company be liable for any shortages nor shall the Customer be entitled to any other relief in respect of shortages.

**PART 5 : INSTALLATION AND COMMISSIONING**

**18. Installation and commissioning**

- 18.1. The provisions of this condition shall only apply where it is stated on the face of the quotation and/or acceptance of order. That the Company shall carry out any installation and commissioning work.
- 18.2. Unless agreed otherwise; The Customer shall ensure that prior to the anticipated delivery date of the Goods
  - 18.2.1. the intended date of any commissioning or installation works and throughout the period of such works the site where the same are to be delivered (and all access routes thereto) is clear can be used without danger or difficulty by vehicles transporting the Goods; the site has full facilities for offloading the Goods and storing the same pending completion of installation and commissioning in a safe and suitable environment.
  - 18.2.2. there is available to the Company suitable lifting equipment, fuel, power and compressed air supplies, labour and test facilities as required by the Company to install, test and commission the Goods and provide any services.
- 18.3. If the Customer shall be in breach of the provisions of this clause above:



- 18.3.1. the Company may at its option either:
  - 18.3.1.1. defer carrying out any installation and commissioning work until the Customer shall have fully complied with the provisions of the clause above; or
  - 18.3.1.2. obtain itself such additional equipment facilities and other items as are required to complete the installation and commissioning.
- 18.3.2. the Customer shall pay to the Company the full amount of all costs and expenses and other losses incurred by the Company as a result of the Customer's breach.
- 18.3.3. If there shall be any dispute as to the amount of the Company's costs, losses and expenses the same shall be certified by the Company's auditors whose certificate shall be final
- 18.4. When the Company considers that it has completed its works of installation and commissioning it shall:
  - 18.4.1. carry out such tests as it considers reasonably necessary to demonstrate that the Goods are functioning in accordance with the Company's specifications;
  - 18.4.2. notify the Customer of the time and place of such tests so that the Customer may nominate one of its employees to be present.
  - 18.4.3. If such tests:
    - 18.4.3.1. show that the Goods are functioning the Company shall issue a statement that effect.
    - 18.4.3.2. do not show that the Goods are functioning the Company shall carry out such further works and additional and further tests until the same demonstrate that the Goods are functioning at which point the Company shall issue a written statement to that effect
- 18.5. If the Company fails to carry out any works of commissioning, testing or installation or fails to carry out the same with due care the Company's sole liability shall be to carry out such further works of commissioning testing and installation as are required in order for the Company to issue a statement in accordance with the provisions of this clause 18.
- 18.6. Under no circumstances shall the Company be liable for any liability other than expressly provided for in this Agreement.

**PART 6 : RISKS AND LIABILITIES**

**19. Risk and title**

- 19.1. The Goods are at the risk of the Customer from the Time of Delivery.
- 19.2. Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
  - 19.2.1. the Goods; and
  - 19.2.2. all other sums which are or which become due to the Company from the Customer on any account.
- 19.3. Until ownership of the Goods has passed to the Customer, the Customer shall:
  - 19.3.1. hold the Goods on a fiduciary basis as the Company's bailee; and
  - 19.3.2. store the Goods (at no cost to the Company) properly and separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property; and
  - 19.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - 19.3.4. maintain the Goods in satisfactory condition; and
  - 19.3.5. keep the Goods insured on the Company's behalf for their full replacement value against all risks to the reasonable satisfaction of the Company with an Insurance Policy; and
  - 19.3.6. deliver to the Company for inspection as and when reasonably required to do so by the Company:
    - 19.3.6.1. copies of all applicable Insurance Policies; and
    - 19.3.6.2. the receipt for the latest premium then due; and
  - 19.3.7. ensure that the Company is entitled to the benefit of any Insurance Policy; and
  - 19.3.8. procure that the Company's interest in any Insurance Policy shall be noted; and

- 19.3.9. not without the prior approval in writing of the Company, settle or compromise with the insurers any claim which the Customer may have against the insurers and which relates to a claim by the Company against the Customer, or any such act or omission lose or prejudice the Customer's right to make or proceed with such a claim against the insurers.
- 19.4. The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
  - 19.4.1. any sale shall be effected in the ordinary course of the Customer's business at full market value; and
  - 19.4.2. any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 19.5. The Customer's right to possession of the Goods shall terminate immediately if: Customer
  - 19.5.1. is subject to an Insolvency Event; or
  - 19.5.2. suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it; or
  - 19.5.3. fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer; or
  - 19.5.4. ceases to trade; or
  - 19.5.5. encumbers or in any way charges any of the Goods, including, but not limited to, any charge by way of security for any indebtedness
  - 19.5.6. threatens to do any of the things listed above.
- 19.6. The Company shall be entitled to:
  - 19.6.1. recover payment for the Good notwithstanding that ownership of all or any part of the Goods has not passed from the Company; and
  - 19.6.2. retake, sell or otherwise deal with or dispose of all or any part of the Goods for which title has not passed from the Company; and
  - 19.6.3. seek injunctive relief from the Customer's breach of this clause, including any steps to prevent the Customer from disposing or transferring all or any of the Goods.
- 19.7. The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored or installed in order to inspect them, or, where the Customer's right to possession has terminated, to secure them and recover them.
- 19.8. Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- 19.9. If the Customer fails to comply with the obligations on it in this clause, all monies owing by the Customer to the Company shall without prejudice to any other right or remedy of the Company immediately become due and payable.
- 19.10. On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this clause shall remain in effect.

**20. Liabilities**

- 20.1. Unless otherwise agreed in writing or elsewhere expressly provided for in this Agreement, this clause sets out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
  - 20.1.1. any breach of any express or implied provision of these Terms;
  - 20.1.2. any use made or resale or on-supply by the Customer of any of the Goods, or of any product incorporating any of the Goods; and



- 20.1.3. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 20.2. Unless otherwise agreed, all warranties, conditions and other terms implied by statute or common law (save 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, save that the Company warrants that :
  - 20.2.1. at the time of delivery the Goods correspond with their description as defined in these Terms and any Contract ; and
  - 20.2.2. the Goods are supplied subject to and with the benefit of the **Standard Warranty**
- 20.3. Nothing in these conditions excludes or limits the liability of the Company for:
  - 20.3.1. any liability death or personal injury caused by the Company's negligence or that of its Staff; or
  - 20.3.2. under section 2(3), Consumer Protection Act 1987; or
  - 20.3.3. any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - 20.3.4. fraud or fraudulent misrepresentation.
- 20.4. Subject to subclauses 2 and 3 above, and unless otherwise expressly agreed:
  - 20.4.1. the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to [the Contract price]; and
  - 20.4.2. the Company shall not be liable to the Customer for any Losses or Liabilities which arise out of or in connection with the Contract; and
  - 20.4.3. any representation given by or on behalf of the Company to the Customer or its servants or agents is followed or acted upon entirely at the Customer's own risk and the Customer relies solely on his own skill and judgement as to the suitability for any purpose of the Goods to be supplied by the Company. The Company shall not be liable for any such representations.
- 20.5. The Customer shall be liable for and shall fully indemnify the Company against all Liabilities sustained by the Company arising from or consequent upon any breach by the Customer of these Terms, including the Customer's negligent performance or non-performance; breach of contract, breach of statutory or fiduciary duty, any implied warranty, condition or other term, or any duty at common law, or under the express terms of these Terms and
  - 20.5.1. any breach by the Customer of any Applicable Law; and
  - 20.5.2. any damage caused by the Customer's Staff; and
  - 20.5.3. any damage caused to the Goods during any time before the title to the Goods has passed to the Customer; and
  - 20.5.4. any act neglect default or breach of statutory duty on the part of the Customer's Staff
- 20.6. The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order including any application or specification submitted by the Customer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 20.7. The Customer shall :
  - 20.7.1. observe and strictly comply with any requirements or recommendation specified by the Company or the manufacturers of any engine, alternator, radiator or other component comprised in the Goods relating to the fitting or installation, servicing, inspection, testing and use of any Goods ; and
  - 20.7.2. ensure that the Goods are regularly run and tested so as to check and record that the same continue to perform according to specifications.
- 20.8. Without prejudice to the generality of the foregoing conditions or any other conditions contained in these Terms or any Contract the Company shall be under no liability whatever for or in respect of any damage or loss arising directly or

indirectly from the failure by the Customer to comply with or adhere to the provisions contained or referred to in this clause.

- 20.9. A party against whom a claim is made shall not be liable to the party making the claim for any claims arising under these Terms or in relation to its subject matter unless written notice of the claim is given by that claiming party to the other party either within 6 months from when that claiming party became aware of the circumstances giving rise to such a claim or within 6 months of such time when the party against whom a claim is made ought reasonably to have become aware of such circumstances.
- 20.10. The Customer and the Company agree that, having regard to all the circumstances, the provisions of this clause are fair and reasonable.

## **21. Force majeure**

- 21.1. Subject to the sub-clauses below, neither party will be liable for any delay in performing or failure to perform any of its obligations under these Terms caused by a Force Majeure Event where the Affected Party took all precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken.
- 21.2. Any delay or failure by a subcontractor or supplier of a party will not relieve that party from liability for delay or failure except where that delay or failure is also beyond the reasonable control of the subcontractor or supplier concerned.
- 21.3. In the event of an Affected Party being so delayed or prevented from performing its obligations then the Affected Party will:-
- 21.3.1. give notice in writing to the other party ('the Unaffected Party') as soon as reasonably possible, stating the Force Majeure Event, the commencement date and extent of such delay or prevention, the cause and its estimated duration; and
  - 21.3.2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under these Terms; and
  - 21.3.3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention;
- 21.4. If the party claiming the Force Majeure Event has complied with the sub clause above, its performance under these Terms will be suspended for the period that the Force Majeure Event continues, subject to sub-clause 6 below and the Affected Party will have a reasonable extension of time for performance no less than to the period of delay or stoppage.
- 21.5. As regards such delay or stoppage: -
- 21.5.1. costs arising from the delay or stoppage will be born by the party incurring those costs; and
  - 21.5.2. the Affected Party will take all necessary steps to bring that event to a close or to find the solution by which these Terms may be performed despite the Force Majeure Event; and
  - 21.5.3. so long as the Force Majeure Event continues the Unaffected Party may contract with others for the supply of any items and/or services which the Affected Party fails to supply in accordance with the terms of these Terms;
- 21.6. In the event that such delay or prevention continues for more than the Force Majeure Period the Unaffected Party may terminate these Terms on 30 days' written notice to the Affected Party, in which case the provisions of these Terms as far as Consequences of Termination will apply.

## **PART 7 : EXPORT SALES**

### **22. Export Sales**

- 22.1. INCOTERMS shall apply to this Contract save to the extent that they are inconsistent with any of these Terms.
- 22.2. Unless the context otherwise requires any term or expression which is defined or given a particular meaning by the provisions of INCOTERMS shall have the same meaning in these Terms provided that if there is any conflict between the provisions of Incoterms and these Terms the latter shall prevail

- 22.3. When the Goods are supplied for export from the United Kingdom the provisions of these Terms shall apply and in particular the provision of sub clauses below shall be subject to any special terms agreed in writing between the Company and the Customer apply notwithstanding any other provisions of these Terms which may be inconsistent with this Clause
- 22.4. Prior to the anticipated date of delivery of any Goods or the commencement date of any services:
- 22.4.1. the Customer shall obtain all consents licences and permissions which are required for the import of the Goods into the country or place where the same are to be delivered
- 22.4.2. the Customer shall be liable for the payment of any duties on the Goods.
- 22.5. If any such consents licences or permissions are required not obtained prior to such anticipated date of delivery this shall not in any way relieve the Customer of its obligations to pay for the Goods but the Customer shall immediately notify the Company in writing of the failure to obtain the same and notwithstanding any other terms in this or any other contract relating to the Goods the Company shall be deemed to have made complete delivery when such Goods are available for collection ex-works from the Company's premises
- 22.6. Unless otherwise agreed in writing between the Company and the Customer delivery of the Goods shall be made in accordance with these Terms and in no circumstances shall the Company be under any obligation to give notice under Section 32(3) of the Sale of Goods Act 1979
- 22.7. The Customer shall be responsible for complying with any Applicable Law governing the importation of the Goods into the Country of destination and for payment of any duties.
- 22.8. The customer shall not enter into any contract with the company where the companies goods are to be supplied to a place, person or entity that is embargoed, sanctioned or subject to any restrictive measures from the UK government, the government of the USA, the United Nations, NATO or the African Union without the specific written permission of the company. In particular, but not exclusively no goods or services are to be supplied to North Korea, Iran, Sudan, Cuba, Venezuela. The customer acknowledges that the customer must respect the policies not only of its own government, but also comply with the policies of its suppliers who may be located in other jurisdictions and be subject to other laws.
- 22.9. If it becomes apparent that the customer is breaching or attempting to breach sanctions of any of the above entities, the company will have the option to do one or all the following.
- 22.9.1. Cancel all contracts with the customer; no refunds for deposits paid will be;
- 22.9.2. Cancel the contracts concerned with the customer; no refunds for deposits paid will be given;
- 22.9.3. Recover from the customer damages, legal fees, administrative fees related to the breach or attempted breach;
- 22.9.4. Inform the relevant authorities about the activity undertaken by the customer; including providing all communications to/from the customer without limitation.
- 22.9.5. Nullify the warranty coverage provided on the products with immediate effect.
- 22.9.6. Take any other action which is required by law; comply with any request without warrant or court order from any law enforcement official in any jurisdiction, or action that the company deems to be in its material interest, the interests of the national security of any nation or the interests of its employees or directors.
- 22.9.7. The company may not disclose any / all of these actions to the customer unless legally compelled to do so;

## **PART 8 : OPERATIVE PROVISIONS OF THESE TERMS**

### **23. Commencement and duration**

- 23.1. These Terms shall come into effect on the Commencement Date and shall continue in force unless and until terminated in accordance with these Terms.

### **24. Confidentiality**

- 24.1. The Customer shall, unless otherwise authorised by this clause, treat as confidential and keep secret all Confidential Information with the same degree of care as it employs with regards its own confidential information of a like nature and in any event in accordance with the best current commercial security practices.
- 24.2. This clause shall not extend to any information which:-
- 24.2.1. was lawfully in the possession of the Customer prior to the commencement of the negotiations leading to these Terms; or
  - 24.2.2. is already in the public domain or becomes so at a future date (otherwise than as a result of breach of these Terms) ; or
  - 24.2.3. the parties agree in writing is not confidential and may be disclosed; or
  - 24.2.4. is developed by a party without direct or indirect access to, or use or knowledge of, the information disclosed to it by the Company or the Company's Group
- 24.3. The Customer shall not without the prior written consent of the Company divulge any part of the Confidential Information to any person except:
- 24.3.1. to their own Staff and then only to those Staff who need to know the same; or
  - 24.3.2. to the Customer's auditors, an officer of HM Revenue and Customs, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right or duty or obligation to know the business of the Customer and then only in pursuance of such right, duty or obligation; or
  - 24.3.3. to comply with the provisions of any Applicable Law.
- 24.4. The Customer undertakes to:
- 24.4.1. advise all of its Staff who are provided with Confidential Information of the prohibitions against disclosure or improper use set out in these Terms; and
  - 24.4.2. acknowledge its liability to the Company for any disclosure or improper use by any such Staff ; and
  - 24.4.3. notify the Company promptly if it becomes aware of any breach of confidence by any person to whom it divulges or part of the Information; and
  - 24.4.4. give the Company all reasonable assistance in connection with any proceedings which the Company may institute against such person for any breach of confidence; and
- 24.5. The obligations of confidentiality in this clause shall remain in full force and effect during the Confidentiality Period notwithstanding any termination of these Terms.
- 24.6. The Company reserves all rights in the Confidential Information. No rights or obligations in respect of the Confidential Information other than those expressly stated in these Terms are granted to the Customer, or to be implied from these Terms.

## **25. Entire agreement**

- 25.1. These Terms contains the whole terms between the parties in respect of the subject matter of these Terms and supersedes any prior terms, arrangement and understanding between the parties relating to that subject matter, save as provided in the sub clause below.
- 25.2. Any obligation of the parties under any non disclosure Terms entered into prior to these Terms shall remain in full force and effect in so far as there is no conflict between that Terms and these Terms.
- 25.3. The parties confirm:
- 25.3.1. they have not entered into these Terms on the basis of any representations that are not expressly incorporated into these Terms; and
  - 25.3.2. no representations not expressly contained in these Terms have been made to them by any Staff of the other party.
- 25.4. Nothing in this clause shall limit or exclude liability for fraudulent misrepresentation.

## **26. Severability**

- 26.1. If any provision of these Terms is in whole or in part, held by a court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall, to that extent, be severed from these Terms and rendered ineffective as far as possible without modifying the remaining provisions of these Terms and shall not in any way effect the validity or enforcement of these Terms.
- 26.2. If any invalid, illegal or unenforceable provision would be valid, legal and enforceable if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 26.3. In the event of any such deletion the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative revision in place of the provisions so deleted.

## **27. Amendments and consent**

- 27.1. These Terms or any Contract may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner unless:-
  - 27.1.1. set out in writing; and
  - 27.1.2. expressed to amend these Terms; and
  - 27.1.3. signed by a duly authorised executive officer of each of the parties ; and
  - 27.1.4. attached as a Memorandum forming part of these Terms or endorsed on the acknowledgement of order issued by the Company to the Customer.
- 27.2. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information used by the Company shall be subject to correction without any liability on the part of the Company.

## **28. Waiver**

- 28.1. The failure or delay by either party in enforcing at any time or for any period any rights shall not be deemed to be a waiver or in any way prejudice any right of that party under these Terms.
- 28.2. No waiver of any rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or any later breach.
- 28.3. Any waiver shall only be effective:-
  - 28.3.1. if set out in writing; and
  - 28.3.2. if expressed as a waiver; and
  - 28.3.3. if signed by a duly authorised officer or representative of each of the parties; and
  - 28.3.4. to the party to whom it is addressed; and
  - 28.3.5. for the specific circumstances for which it is given

## **29. Cumulative remedies**

- 29.1. The rights and remedies contained in these Terms are cumulative and not exclusive of any rights or remedies provided by law.

## **30. Partnerships, agency and joint ventures**

- 30.1. Nothing in these Terms shall be deemed to constitute an agency, partnership, joint venture, fiduciary relationship or other relationship between the parties other than a contractual relationship expressly provided for in these Terms and neither of them shall have the authority or power to bind the other of them or to contract in the name of or create a liability against that other in any way or for any purpose unless expressly provided for in these Terms.

**31. Assignment**

- 31.1. The Customer shall not assign or transfer or purport to assign or transfer any of its rights or obligations under these Terms.
- 31.2. Any attempted assignment in violation of this clause will be void and without effect.

**32. Subcontracting**

- 32.1. The Company reserves the right to perform all and any of its obligations under the Contract by one or more sub-contractors of its choice. All these Terms apply notwithstanding that the work is performed by sub-contractors.

**33. Third party rights**

- 33.1. The Company may perform any of its obligations or exercise any of its rights under these Terms by itself or through any member of the Company's Group **PROVIDED THAT** any act or omission of any such other member shall be deemed to be the act or omission of the Company.
- 33.2. For the purposes of the Contracts (Rights of Third Parties) Act 1999 each member of the Company's Group shall have the benefit of these Terms.
- 33.3. Except as provided in this clause no term of these Terms is intended to confer a benefit on, or to be enforceable by any person other than a party to these Terms or successor or permitted assignee under The Contracts (Rights of Third Parties) Act 1999.
- 33.4. This clause does not affect any right or remedy of a third party which exists which is available apart from that Act.

**34. Notices**

- 34.1. All notices required to be given under these Terms, save where oral notices permitted by these Terms, shall be:-
  - 34.1.1. English and in writing ; and
  - 34.1.2. sent using a permitted method marked for attention of the parties nominated representative of the party intended to be served at the permitted address ; and
  - 34.1.3. signed by or on behalf of the duly authorised officer of the Party giving the notice ; and
  - 34.1.4. marked for the attention of the Company's Representative (in the case of notices given to the Company) ; and
  - 34.1.5. deemed to be given to and received by in accordance with this clause.
- 34.2. The permitted methods of service of any notices, save where oral notice is permitted by these Terms, and the corresponding dates on which service is deemed to be given to and received by the addressee as follows:

| <b>Method of service</b>   | <b>Deemed day of service</b>   |
|--|--|
| <b>First class recorded post</b> (postage pre paid)  | The 2 <sup>nd</sup> day after it was signed for by a company director; |
| <b>Personal delivery</b> of the document to or leaving it at a permitted address or with a representative of the party to be served: |  |
| after 5.00pm   | The next day   |
| before 5.00pm  | The day that the document was delivered                                |
| in any other case  | On the next business day after it was transmitted                      |
| <b>Other electronic method</b> (where agreed between the parties)  | The 2 <sup>nd</sup> day after the day on which receipt was confirmed.  |

### Method of service

### Deemed day of service

- 34.3. In proving the giving of the notice it shall be sufficient to prove that:
- 34.3.1. the notice was left ; or
  - 34.3.2. the envelope containing the notice was properly addressed and posted; or
  - 34.3.3. the applicable means of electronic communication was addressed and despatched, and despatch of the transmission was confirmed and/or acknowledged as the case may be.
- 34.4. The original of any notice or other communication given by facsimile shall be forwarded to the recipient(s) immediately following transmission but the non-arrival of that original shall not affect the validity of the notice or other communication by facsimile.
- 34.5. The address of each party for all notices under or in connection with these Terms is as specified in these Terms or as last notified by that party in writing to the other parties (including, if by fax, the provision of a facsimile number) .
- 34.6. Each of the parties will give notice to the other of the change of any address or telephone, fax or email or similar number as soon as practicable and in any event within 48 hours of such change or acquisition.
- 34.7. Unless stated otherwise, the provisions of this clause shall not apply to day to day communication between representatives of the parties relating to the performance of the services in these Terms.

### 35. Language

- 35.1. These Terms is made only in the English language.
- 35.2. If there is any conflict in the meaning between the English language version of these Terms and any version or translation of it any other language, the English language version shall prevail.

### 36. Survival of terms

- 36.1. Termination of these Terms shall not in any way prejudice or affect the operation of any of the provisions of these Terms which contemplate or are capable of operation after termination and accordingly all such provisions shall continue in full force and effect after termination.

## PART 9 : TERMINATION

### 37. Scope of termination

- 37.1. The provisions of this Part concerning termination shall apply to any particular Contract PROVIDED THAT the ground for termination relates, in the reasonable opinion of the Company, only to that particular Contract alone. For the avoidance of doubt any remaining Contracts and these Terms shall continue in accordance with the terms of these Terms unless, in the reasonable opinion of the Company, the ground for termination is sufficiently serious that any further Contracts are affected by the default or event, in which case the termination shall apply to such of those Contracts which, in the reasonable opinion of the Company, are affected.

### 38. Rights to terminate without notice

- 38.1. The Company may upon serving written notice on the Customer which is in default (“the Defaulting Party”) immediately terminate these Terms upon the occurrence of any of the following events (“Events of Default”)
- 38.1.1. the Customer:
    - 38.1.1.1. committing any serious breach of any term of these Terms which is not capable of being remedied; or
    - 38.1.1.2. committing a material breach of any of its obligations under these Terms where such breach is:
      - 38.1.1.2.1. capable of remedy; but which



- 38.1.1.2.2. has not been remedied
- 38.1.1.2.3. within 14 days after receipt of a written notice identifying the breach and requiring remedy of the same ; or
- 38.1.1.3. committing two or more serious breaches of these Terms within any period of 6 months ; or
- 38.1.1.4. repeatedly committing breaches of any of the terms of these Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these Terms ; or
- 38.1.2. the Customer suspending or ceasing, or threatening to suspend or cease, to carry on the whole or a substantial part of its business; or
- 38.1.3. the Customer becoming subject to an Insolvency Event; or
- 38.1.4. the Customer failing to satisfy a judgment in excess of the Judgment Limit entered against it within 21 days after it becomes aware of the judgment, EXCEPT WHERE
  - 38.1.4.1. it provides evidence on an ongoing basis to the reasonable satisfaction of the other party that steps have been initiated within the 21 days to appeal, review or rescind the judgment and to procure suspension or execution of the judgment; and
  - 38.1.4.2. that such steps are being expeditiously proceed
 in which case the period of 21 days shall run from the date on which the judgment becomes final, or the date on which the attempt to procure suspension of the execution fails.

### **39. The Company's additional rights to terminate without notice**

- 39.1. The Company shall have the right, without prejudice to its other rights or remedies, to terminate these Terms immediately upon notice to the Customer if the Customer:
  - 39.1.1. fails to pay any amount due under these Terms on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment ; or
  - 39.1.2. is guilty of any conduct which in the reasonable opinion of the Company may bring the Company into disrepute ; or
  - 39.1.3. undergoes a material adverse change in its business ; or
  - 39.1.4. undergoes a Change of Control which does not result in control passing to a company, that immediately prior to the change in question, was an affiliate of the Customer; or
  - 39.1.5. sells all of its assets or is merged or reorganised in circumstances where it is not the surviving entity; or
  - 39.1.6. disputes the ownership or validity of the Company's IPR.

### **40. Consequences of termination**

- 40.1. The Company shall not be liable to the Customer in respect of any termination whatever the cause for the termination unless otherwise provided for in these Terms.
- 40.2. Upon and with effect from the Termination Date:
  - 40.2.1. All rights and obligations of the parties shall cease to have effect immediately upon termination of these Terms except that termination shall not affect:
    - 40.2.1.1. the accrued rights and obligations of the parties at the Termination Date; and
    - 40.2.1.2. the continued existence and validity of the rights and obligations of the parties under those clauses which are expressed to be or being of a continuing nature and are intended to survive termination, including non-solicitation and confidentiality.
  - 40.2.2. the Customer shall:
    - 40.2.2.1. pay:



40.2.2.1.1. all amounts due to the Company pursuant to Cancellation of the Contract(s) in accordance with these Terms and any appropriate apportionments shall be made on a time basis; or

40.2.2.1.2. the cost to the Company of any goods, works or materials expended in the execution and in preparation for the execution of the Contract and further in every case the profit which the Company might reasonably have been made on such Contract but the Company shall give credit to the amount of any such costs (but not profit) recovered in respect of the same goods or materials by virtue of any other contract and the amount of any deposit recovered from the Customer. Such sum ascertained as aforesaid shall be certified by the auditors to the company and their certificate shall be final

40.2.2.2. immediately return and surrender to the Company anything belonging to the Company which is in its possession or control (excluding Confidential Information); and

40.2.2.3. immediately return and surrender to the Company all documents and materials (and any copies) containing, reflecting, incorporating or based on, the Company's Confidential Information, provided that the Customer may retain documents and materials (and any copies) containing, reflecting, incorporating or based on, the Company's Confidential Information to the extent required by law or Applicable Law; and

40.2.2.4. erase the Company's Confidential Information from the Customer's computer systems (to the extent possible) ; and

40.2.2.5. if requested by the Company, certify in writing, to the Company that it has complied with the requirements of this clause.

40.2.3. the Company:

40.2.3.1. may withhold any money due under these Terms to the Customer; and

40.2.3.2. may suspend any further Contracts

40.2.3.3. may suspend the delivery of any Goods or the commencement of any Services under any Contract

40.2.3.4. shall have a lien on any property belonging to the Customer in the Company's possession as security for payment in full by the Customer for amounts due to the Company pursuant to these Terms.

40.2.3.5. and the expenses incurred by the Company in consequence of such removal storage and/or disposal.

40.3. If the Customer fails to reimburse the Company for the sums referred to in the clauses above within 28 days after the date of the Company's demand then the Company may (and the Customer irrevocably authorises the Company to):

40.3.1. sell the items removed, dismantle and/or stored ; and

40.3.2. deduct its costs and expenses and other sums as set out in the clauses above due from the proceeds of sale ; and

40.3.3. deliver the balance (if any) to the Customer.

## PART 10 : RESOLVING DISPUTES

### 41. Dispute resolution procedure

41.1. Any dispute which arises in regard to:

41.1.1. the interpretation or validity of these Terms or any Contract; or

41.1.2. the carrying into effect of these Terms or any Contract; or

- 41.1.3. any of the parties' rights and obligations arising from these Terms or any Contract; or
  - 41.1.4. the termination or purported termination of these Terms or any Contract; or
  - 41.1.5. consequences arising from the termination or purported termination of these Terms or any Contract; or
  - 41.1.6. the rectification or proposed rectification of these Terms, or out of or pursuant to these Terms or on any matter which in terms of these Terms requires terms by the parties (other than where injunctive relief may be obtained from a court of competent jurisdiction);
  - 41.1.7. any other dispute which arises between the parties shall be dealt with by the parties on the basis set out in this Part
- 41.2. Any dispute arising out of or in connection with these Terms or any Contract (other than any IPR-related disputes) will be dealt with as follows:-
- 41.2.1. where there is a dispute the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of that other party ; and
  - 41.2.2. the representative of each of the parties shall meet in person at the next progress meeting or at an earlier date if so requested by any party in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective parties ; and
  - 41.2.3. the members of the relevant meeting shall use their best endeavours to resolve disputes arising out of these Terms; and
  - 41.2.4. if the dispute is not resolved at that meeting, the dispute will be referred to the management levels shown below in the timescale shown below in an attempt to resolve the dispute ; and

| Level                 | Timescale                 | Company                       | Customer                      |
|-----------------------|---------------------------|-------------------------------|-------------------------------|
| 2 <sup>nd</sup> level | Within 7 days of referral | Director                      | Director                      |
| 3 <sup>rd</sup> level | Within 7 days of referral | Managing Director or Chairman | Managing Director or Chairman |

- 41.2.5. If the dispute is not resolved at that initial meeting, the escalation will continue with the same maximum time interval up to the third management level ; and
- 41.2.6. If the unresolved dispute is having a material effect on the performance of these Terms or any Contract, the parties will use their respective best endeavours to reduce the elapse of time in reaching a resolution of the dispute ; and
- 41.2.7. If any of the above personnel is unable to attend the meeting, a substitute may attend, provided that such substitute has at least the same seniority and is authorised to settle the unresolved dispute ; and
- 41.2.8. Each party will use all reasonable endeavours to reach a negotiated resolution through the above dispute resolution procedures ; and
- 41.2.9. The specific format for such resolution will be left to the reasonable discretion of the relevant management level, but may include the preparation and submission of statements of fact or of position ; and
- 41.2.10. If a dispute is not resolved at the meeting of the third management level, then either party may (at such meeting or within 14 days of its conclusion) request that the dispute be referred to an expert to be agreed between the parties ; and
- 41.2.11. If the parties cannot agree on an expert to act within 14 days of the date of the request to appoint an expert, such independent expert will be appointed by the Centre for Dispute Resolution on the application of either party ; and
- 41.2.12. Any person to whom a reference is made to the above clauses will act as an expert and not as an arbitrator ; and
- 41.2.13. The parties agree that the decision of the expert (which will be given writing (stating reasons) will be final and binding on the parties ; and

- 41.2.14. Each party will provide the expert to whom a reference is made under this clause with such information as he may reasonably require for the purposes of his determination ; and
- 41.2.15. If either party claims any such information to be confidential to it, then provided in the opinion of the expert that party has properly claimed the same as confidential, the expert will not disclose the same to the other party or to any third parties ; and
- 41.2.16. The costs of the reference to an expert (including the costs of any technical expert appointed by him) will be born in the first instance by the party making the reference ; and
- 41.2.17. The expert will in his decision determine the liability for such costs, which decision shall be final and binding on the parties ; and
- 41.2.18. Nothing in this clause will restrict at any time, while the above dispute resolution procedures are in progress or before or after they are invoked, either party's freedom to commence legal proceedings to preserve any legal right or remedy or to protect any IPR ; and
- 41.2.19. While the dispute resolution procedure above is in process and any party has an obligation to make a payment to another party or to allow credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties payment obligations under these Terms ; and
- 41.2.20. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

#### **42. Intellectual property disputes**

- 42.1. Each party recognises that the other party's business relies upon the protection of its IPR and that in the event of a breach or threatened breach of IPR the other party will be caused irreparable damage and such other party may therefore be entitled to injunctive or other equitable relief in order to prevent a breach or threatened breach of its IPR.

#### **43. Proper law and jurisdiction**

- 43.1. These Terms and all matters arising from it shall be governed by and construed in accordance with English law notwithstanding any conflicts of law, provisions and other mandatory legal provisions.
- 43.2. Each party irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds on the grounds of venue or on grounds that the proceedings have been brought in an inconvenient forum.
- 43.3. The Company shall have the right to sue:-
- 43.3.1. to recover its fees in any jurisdiction in which the Customer is operating or has assets; and
- 43.3.2. for breach of its IPR (whether in connection with these Terms or otherwise) in any country where it believes that infringement or a breach of these Terms relating to its IPR might be taking place.
- 43.4. The parties agree that the place of the performance of these Terms is England.