

**Terms and Conditions of Sale  
Runners, Repeaters, Strangers and Aliens (March 2019)**

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## **1. DEFINITIONS**

- 1.1. "Buyer" means the person(s), firm, company or corporation who purchases the Goods and/or Services from the Seller.
- 1.2. "Buyer Property" means any property of the Buyer including any equipment and tooling issued free of charge provided or made available to the Seller for the purpose of the Seller supplying the Goods or performing any Services.
- 1.3. "Contract" means any contract between the Seller and the Buyer for the supply of Goods and/or Services, resulting from the Buyer's request or order placed by the Buyer, on these terms and conditions and the terms on the face of the document under which it is accepted by the Seller.
- 1.4. "Freight-Forwarder" means the agent or the carrier designated by the Buyer, or if none, the agent or the carrier chosen by the Seller on the Buyer's behalf who will accept delivery of the Goods and/or Buyer Property on behalf of the Buyer and transport the same to the Buyer.
- 1.5. "Goods" means any goods, components, Goods or materials agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them).
- 1.6. "Seller" means Darchem Engineering Ltd
- 1.7. "Services" means any services (including without limitation any maintenance, repair or overhaul services) agreed in the Contract to be provided to the Buyer by the Seller (including any part or parts of them).
- 1.8. "Variation" means any change to the Contract that has been approved in writing by the Buyer and the Seller.

## **2. BASIS OF ORDER AND ACKNOWLEDGEMENT**

- 2.1. The Contract is subject to these terms and conditions to the exclusion of all other terms and conditions (including any terms and conditions the Buyer purports to apply in any Contract).
- 2.2. A Contract shall not be effective until the Seller has issued written acknowledgment and acceptance of such Contract (notwithstanding any earlier confirmation of receipt). The Seller may in its sole discretion decline any purchase order placed by the Buyer.
- 2.3. Minimum order quantities and minimum Contract values, where necessary, may apply at the Seller's discretion.
- 2.4. The Buyer shall ensure that the terms of its purchase order or request are complete and accurate.
- 2.5. No change or modification of Contracts shall be allowed after acceptance by the Seller unless authorized by a Variation delivered by the Buyer and accepted in writing by the Seller.
- 2.6. If there is any conflict between the Seller's quotation and the Seller's acknowledgment of the Contract then the latter shall take precedence.

## **3. DESCRIPTION AND SPECIFICATION OF THE GOODS AND SERVICES**

- 3.1. The description, part numbers and/or specification of the Goods and/or Services shall be set out in the Seller's quotation or the Seller's acknowledgment of the Contract. All drawings, descriptions, weights, dimensions, etc. and advertising issued by the Seller (for example, in the Seller's catalogues or price lists) are issued to provide an approximate idea of the Goods and Services described in them and do not form part of the Contract unless expressly stated in the Contract or otherwise agreed to in writing by the Seller.
- 3.2. The Buyer shall determine the suitability of the Goods and Services for the Buyer's use and/or application. The Buyer shall be solely responsible for the accuracy of the Buyer's designs, drawings, specifications and other data supplied to the Seller by the Buyer, even if the Seller examines, inspects, studies or comments to the Buyer regarding any such designs, drawings, specifications or other data.

## **4. CONTRACT PRICE**

- 4.1. The Seller reserves the right to adjust prices where necessary before a Contract is accepted notwithstanding the prices stated in any price list or quotation. The price charged in respect of Goods and/or Services supplied shall be the price that is current at the date of delivery. The Seller shall not normally perform Services until the Buyer has confirmed its agreement to the estimated price.
- 4.2. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the Seller's control (such as, without limitation, any increase in the costs of labour, materials, or other costs of manufacture or supply); any change in the quantities of the Goods requested by the Buyer; any change in the delivery dates of the Goods and/or Services requested by the Buyer; or any delay or cost caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

- 4.3. Unless otherwise agreed in writing, the price for the Goods and/or Services shall be exclusive of any taxes (including sales tax) or levies and the Buyer will pay all costs and charges in relation to packaging (other than standard packaging), loading, unloading, carriage, freight and insurance, together with export and/or import charges or duties, where appropriate.

## **5. PAYMENT TERMS**

- 5.1. Payment for the Goods and/or Services and other charges is due thirty (30) days after the date of the Seller's invoice. The Seller may issue a separate invoice for each Contract or for each shipment (if more than one) under a Contract. The Buyer shall pay the amount stated in the Seller's invoice in the currency required by the invoice in immediately available funds, without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise. Payment must be made to the Seller at the address or account stated on the invoice. Time of payment is of the essence.
- 5.2. The Seller reserves the right to revise payment terms at any time and to request guarantees, security, stage payments or cash in advance for the Goods and/or Services. The Seller may, at its discretion, refuse or limit deferred payment terms to the Buyer.
- 5.3. Notwithstanding any other provision, all payments payable to the Seller under the Contract shall become due immediately upon termination of the Contract for whatever reason.
- 5.4. If any sum due from the Buyer to the Seller under the Contract or any other contract or order is not paid to the Seller on or before the due date for payment, then all sums then owing by the Buyer to the Seller or any affiliate of the Seller shall become due and payable immediately and, without prejudice to any other right or remedy available to the Seller, the Seller and any affiliate shall be entitled to: (a) cancel or suspend performance of the Contract or any other contract or order placed with the Seller or any affiliate including suspending deliveries of the Goods, Services and/or any other goods until arrangements as to payment or credit have been established which are satisfactory to the Seller; and/or (b) require the Buyer to pay for Goods and/or Services prior to shipment from the Seller's place of business; and/or (c) charge the Buyer interest calculated on a daily basis on all overdue amounts (both before and after judgment) until actual payment at the rate of four per cent (4%) per annum above the London Interbank Offered Rate (LIBOR) prevailing from time to time (or such other rate which is legally permissible) until payment is made in full.

## **6. BUYER PROPERTY**

- 6.1. It shall be the Buyer's responsibility to ensure that any tooling and/or material issued free of charge and other Buyer Property delivered to the Seller by the Buyer or on its behalf is safe and suitable for manufacture of or incorporation into Goods or for the Services to be performed in accordance with all regulatory guidelines and procedures.
- 6.2. The Seller shall use the Buyer Property solely for the purpose of the Contract and shall at the Buyer's expense maintain the Buyer Property in good order, condition and repair while it is in the Seller's possession or control.
- 6.3. On completion or termination of the Contract, unless otherwise directed by the Buyer in writing, the Seller shall deliver the Buyer Property to the Buyer in accordance with Section 7.
- 6.4. Without prejudice to any other rights and remedies which the Seller may have under the Contract, the Seller shall, in respect of all debts owed by the Buyer to the Seller, have a general lien on any of the Buyer Property in the Seller's possession and the Seller shall be entitled after thirty (30) days' prior written notice to the Buyer to dispose of such of the Buyer Property as the Seller thinks fit and to apply any proceeds of sale towards the payment of such debts.

## **7. DELIVERY AND ACCEPTANCE**

- 7.1. Unless agreed otherwise by the Seller in writing or expressly stated in the quotation provided to the Buyer:
- 7.1.1. the Seller will arrange for the Freight-Forwarder to transport the Goods and/or Buyer Property (unless Section 7.1.2 applies) at the Buyer's risk and cost, and delivery will take place FCA (Incoterms 2010) when the Goods and/or the Buyer Property is made available to the Freight-Forwarder at the Seller's facility;
- 7.1.2. the Buyer will arrange for the Freight-Forwarder to transport the Buyer's Property on which Services are to be performed and delivery will take place DDP (Incoterms 2010) when the Buyer Property is delivered by the Freight-Forwarder at the Seller's facility.
- 7.2. Delivery dates for the supply of the Goods and Services are estimates only and time is not of the essence. The Seller will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, Buyer Property and/or Services, nor will any delay entitle the Buyer to terminate or rescind the Contract.
- 7.3. If for any reason the Buyer does not take delivery, or the Seller is unable to deliver the Goods. Buyer Property and/or the Services on the estimated delivery dates because the Buyer has not provided

appropriate instructions, documents, licences, authorisations, etc., then such Goods and/or Buyer Property will be deemed to have been delivered and risk shall pass to the Buyer. The Seller may at its option: (a) store such Goods and/or Buyer Property until actual delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance); and/or (b) re-allocate or take reasonable steps to sell such Goods and/or Buyer Property at the best price readily obtainable (after providing not less than thirty (30) days' prior written notice to the Buyer). The Seller may charge the Buyer for any shortfall below the Contract price or account to the Buyer for any excess (after deducting all reasonable survey, repair, storage and selling expenses); and/or (c) invoice the Buyer for all related costs and expenses incurred by the Seller.

- 7.4. The Buyer shall promptly notify the Freight-Forwarder of any damage to, loss from or non-receipt of any Goods and/or Buyer Property if transportation has been arranged by or on behalf of the Buyer. The Seller shall not be liable for any such damage, loss or nonreceipt.
- 7.5. The Buyer may arrange for testing and inspection of the Goods before shipment at the Seller's facility. If the Buyer has conducted such inspection, the Seller shall not be liable for any claim made after shipment in respect to any defect in the Goods which would have been apparent upon such inspection.
- 7.6. The Seller may, at its option, make partial shipments of Goods and invoice the Buyer for each shipment individually in which case each delivery shall constitute a separate contract. Failure by the Seller to deliver any one or more of the shipments in accordance with these terms and conditions or any claim by the Buyer in respect of any one or more shipments shall not entitle the Buyer to terminate the whole Contract or refuse to accept subsequent shipments. The Buyer shall accept any early delivery.
- 7.7. The Buyer will be deemed to have accepted the Goods as being in accordance with the Contract, the Seller shall have no liability for any defect and/or failure and the Buyer shall be bound to pay the price unless: (a) within fifteen (15) days of the date of delivery of the Goods, the Buyer notifies the Seller in writing of any defect apparent upon inspection of the Goods to conform with the Contract; or (b) the Buyer notifies the Seller in writing of any failure of the Goods to conform to the Contract within a reasonable time where the defect and/or failure would not be so apparent within fifteen (15) days of the date of delivery.
- 7.8. The Buyer shall be responsible for checking that all documentation supplied by the Seller to the Buyer is accurate and free from error. The Seller agrees to remedy any inaccuracies/errors in such documentation provided that the Buyer has notified the Seller of the inaccuracies/errors within thirty (30) days of receipt of the relevant document(s). Beyond such period, the Seller reserves the right to charge an administration fee for any amendments made.

## **8. PASSING OF RISK AND TITLE**

- 8.1. The risk in Goods and Buyer Property shall pass to the Buyer on delivery as set forth herein. Subject to Section 8.4, full legal, beneficial and equitable title to the Goods shall remain vested in the Seller (even though they have been delivered and risk has passed to the Buyer) until the Seller gives written notice to the Buyer to pass legal and beneficial ownership of the Goods to the Buyer or, if earlier: (a) payment in full, in cash or cleared funds, for all the Goods has been received by the Seller; and (b) all other money payable by the Buyer to the Seller on any other account or under the Contract or any other contract or order has been received by the Seller. Until full legal, beneficial and equitable title to and property in the Goods passes to the Buyer: the Buyer shall hold the Goods on a fiduciary basis as the Seller's bailee and shall store the Goods at its premises, insure them without any charge to the Seller, and keep them clearly identifiable as belonging to the Seller; the Seller may, on demand and without prior notice, repossess and resell the Goods if any of the events specified in Section 14.3 occurs or if any sum due to the Seller from the Buyer is not paid when due and for this purpose, the Seller, its employees, agents and sub-contractors will be entitled to unrestricted access to any premises where any of the Goods are situated.
- 8.2. The Seller hereby authorises the Buyer to use and/or sell the Goods in the normal course of the Buyer's business and to pass good title in the Goods to its purchasers, if they are purchasers in good faith without notice of the Seller's rights. This right shall automatically cease on the occurrence of any event set out in Section 14.3 and/or if any sum owed to the Seller by the Buyer is not paid when due. If the Buyer sells the Goods prior to paying the full price thereof: (a) the Buyer shall hold the proceeds of sale on trust for the Seller; and (b) title to the Goods shall pass from the Seller to the Buyer immediately prior to the Buyer entering into a contract for the sale of those Goods.
- 8.3. The Seller's rights and remedies set forth herein are in addition to and shall not in any way prejudice, limit or restrict any of the Seller's other rights or remedies under the Contract or in law or equity. The Seller shall be entitled to maintain an action against the Buyer for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to the Buyer.
- 8.4. Title to the Buyer Property shall at no time pass to the Seller unless the Buyer specifically agrees otherwise in writing, or Section 7.2 (b) applies.

- 8.5. Risk in the Buyer Property shall pass to Seller on delivery to the Seller and remain with the Seller at all times while in the Seller's possession or control.

## **9. WARRANTY**

- 9.1. The Seller warrants that the Goods furnished hereunder shall, at the time of delivery, be free from defects in material and workmanship. Services shall be performed with reasonable skill and care. The Buyer shall submit to the Seller reasonable written details (on Seller's prescribed form if required) establishing a breach of the warranty set forth above. Unless agreed otherwise by the Seller in writing, the Seller's liability for failure of any Goods or Service to comply with the foregoing shall be limited to replacing or repairing the Goods and/or to re-performing the Services found to be defective within six (6) months of delivery. Such Goods will be repaired or replaced, at the Seller's option, or Services re-performed, without charge, and re-warranted for the remainder of the original warranty period.
- 9.2. The Seller shall pay all reasonable return packaging and transportation costs of a valid warranty claim. The Seller is not liable for the removal of Goods from, or installation of the Goods into, any other property to which it may be attached or incorporated.
- 9.3. If requested by the Seller, the Buyer shall promptly deliver back to the Seller any Goods and/or materials which have been replaced and legal title to the replaced Goods shall re-vest in the Seller.
- 9.4. The Seller's performance of one of the options set out in Section 9.2 shall constitute an entire discharge of the Seller's liability for breach of the warranty at Section 9.1.
- 9.5. For Goods that is returned under warranty and is tested and no fault found, the Seller will be entitled to reimbursement from the Buyer for reasonable charges incurred for transportation, testing and evaluation.
- 9.6. For any Goods not manufactured by the Seller, the Buyer shall only be entitled to the benefit of any warranty or guarantee given by the manufacturer to the Seller, to the extent that it is assignable by the Seller to the Buyer.
- 9.7. The Seller shall not be liable for a breach of the warranty at Section 9.1 in any of the following circumstances: (i) Goods or parts thereof have been modified, altered, installed, used or serviced other than in conformity with the Seller's applicable specifications, manuals, bulletins or written instructions, or which shall have been subjected to improper installation, misuse or neglect; (ii) Goods have not been maintained and operated in accordance with the Seller's instructions; (iii) normal wear and tear, willful or accidental damage, harsh environment or experimental running; (iv) Goods or parts thereof have been furnished by the Buyer or acquired from others at the Buyer's request and/or to the Buyer's specifications, and any use or incorporation of components not manufactured by or authorized by the Seller in the Goods; (v) Goods are expendable in nature; (vi) Goods with a stated shelf life or 'use by' date, if such shelf life has expired or 'use by' date has passed; (vii) tooling purchased or made for the purpose of manufacturing the Goods; (viii) the Buyer or its customer fails to afford the Seller a reasonable opportunity to inspect the Goods or Services; (ix) the price for Goods or Services, or any other goods or services supplied by the Seller or its affiliates, has not been received in full.
- 9.8. Minor deviations from specifications which do not affect performance of the Goods shall not be deemed to constitute defects in materials or workmanship or a failure to comply with the specifications referred to herein. The need for regular overhaul of Goods shall not constitute a defect or failure for the purposes of the warranty at Section 9.1.
- 9.9. In relation to any software that may be incorporated into the Goods, the Seller gives no warranty that: (i) the functions of the software will meet the Buyer's requirements or will enable it to attain the objectives the Buyer has set for itself, (ii) the software will operate in the combination or environment selected for use by the Buyer, or (iii) the operation of the software will be uninterrupted or free of errors. The Buyer shall be solely responsible for the results produced by the software and ensuring that the results comply with the Buyer's specified requirements.
- 9.10. OTHER THAN AS SET OUT IN SECTION 9.1, ALL WARRANTIES, CONDITIONS, TERMS, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED FROM THE CONTRACT.

## **10. SUBCONTRACTING, ASSIGNMENT AND THIRD PARTY RIGHTS**

- 10.1. The Buyer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Seller.
- 10.2. The Seller may assign, charge, subcontract or transfer the Contract or any part of it to any person, including its affiliates, without the consent of the Buyer.
- 10.3. Other than affiliates of the Seller, a person who is not a party to the Contract (including without limitation any employee, officer, agent, representative or sub-contractor of either party) shall not have any right to



enforce any term of the Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Seller and the Buyer.

- 10.4. Without prejudice to the intention of the parties to give no rights to the third parties under the Contract, any term of the Contract can be varied and the Contract can be cancelled or terminated without the consent of any third party who might benefit from its terms or have enforceable rights under the Contract.

## **11. EXCLUSION AND LIMITATION OF LIABILITY**

- 11.1. These terms and conditions set out the entire liability of the Seller (including any liability for the acts or omissions of its subcontractors) in respect of Goods and/or Services supplied by the Seller and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2. Nothing in these terms and conditions shall exclude or limit the Seller's liability for death or personal injury caused by the Seller's negligence or for fraudulent misrepresentation or for any liability that cannot legally be excluded or limited. ANY LIMITATION OR EXCLUSION OF LIABILITY SHALL APPLY TO THE EXTENT PERMITTED UNDER APPLICABLE LAW.
- 11.3. THE SELLER SHALL NOT BE LIABLE FOR: (1) ANY LOSS OF ANTICIPATED PROFITS, (2) ANY LOSS OF ACTUAL PROFITS, (DIRECT OR INDIRECT), (3) ANY LOSS OF ANTICIPATED SAVINGS, (4) ANY LOSS OF BUSINESS, (5) ANY ECONOMIC LOSS OF WHATEVER NATURE, (6) ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED, (7) ANY LOSS ARISING AS A RESULT OF ANY THIRD PARTY BRINGING A CLAIM OF ANY NATURE WHATSOEVER, AND/OR (8) ANY LOSS RESULTING FROM USE, APPLICATION OF OR RESULTS OBTAINED FROM ANY SOFTWARE INCORPORATED INTO THE GOODS. THE SELLER SHALL NOT BE LIABLE FOR ANY SUCH LOSS WHETHER OR NOT ANY SUCH LOSS OR DAMAGE WAS FORESEEN, DIRECT, FORSEEABLE, KNOWN OR OTHERWISE.
- 11.4. SUBJECT TO SECTION 11.2, THE TOTAL AGGREGATE LIABILITY OF THE SELLER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT WHETHER FOR NEGLIGENCE OR BREACH OF CONTRACT OR ANY CAUSE WHATSOEVER SHALL IN NO EVENT EXCEED THE PRICE PAID BY THE BUYER FOR THE GOODS OR SERVICES GIVING RISE TO THE BUYER'S CLAIM. NOTWITHSTANDING ANY OTHER TERMS AND CONDITIONS OF THE CONTRACT, THE SELLER SHALL HAVE NO LIABILITY FOR THE USE BY THE BUYER OF COMPONENT PARTS INCLUDING SOFTWARE IN THE GOODS WHICH ARE NOT MANUFACTURED BY OR AUTHORISED BY THE SELLER.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1. Any intellectual property rights (including, without limitation, patents, registered and unregistered designs, trademarks and service marks (registered or not) and copyright and any applications for them) in the Goods and/or Services or in any moulds, tools, designs, drawings, or data owned by the Seller or created by the Seller in the course of the performance of the Contract or otherwise used in the manufacture of the Goods and/or the provision of the Services shall remain the Seller's property unless otherwise expressly agreed in writing by the Seller. The Seller grants, on full payment for the Goods and Services the non-exclusive right for the Buyer and bona fide purchasers from the Buyer to use, for the operation of the Goods or Services for their intended purpose only, (a) any software supplied with, or embedded in, the Goods and Services, and (b) technical manuals and instructions relating to operation and maintenance of the Goods and Services. The Buyer hereby grants to the Seller, a non-assignable non-exclusive, royalty-free licence to use any intellectual property rights (including, without limitation, patents, registered and unregistered designs, trademarks and service marks (registered or not) and copyright and any applications for them) owned by the Buyer to the extent necessary for the Seller to supply the whole or any part of the Goods and/or Services in accordance with the Contract. Except as expressly stated herein, nothing in the Contract shall be deemed to have given the Buyer a licence or any other right to use any of the intellectual property rights of the Seller unless otherwise expressly agreed in writing by the Seller.

## **13. CONFIDENTIALITY AND DATA PROTECTION**

- 13.1. The Buyer and the Seller shall each keep confidential and shall not, without the prior written consent of the other, disclose to any third party or otherwise make public the terms or existence of the Contract or any other confidential or sensitive information of the other.
- 13.2. The Buyer agrees that it will not exhibit the Goods or any advertisements or price lists relating to any of the Seller's goods or services without the prior written consent of the Seller.

- 13.3. In relation to any personal data provided or made available to the Buyer by the Seller, the Buyer must (a) process the personal data only in accordance with the Seller's lawful instructions; (b) take appropriate technical and organisational measures against unauthorised or unlawful processing and against accidental loss of the personal data; (c) not disclose the personal data to any party who carries on business outside the European Economic Area (EEA) and the UK if the personal data originated in the EEA and the UK; and (d) cooperate fully with the Seller to enable the Seller to adequately discharge its responsibility as a data controller including assisting with data subject access requests.
- 13.4. The Seller may obtain individually identifiable data about individuals ("personal data") in connection with the provision of Goods or services to the Buyer (e.g., contact and other limited information about Customer employees or other individuals who interact with us). Unless the Seller specifically agrees otherwise, the Buyer acts as the owner/controller of such personal data, and retains responsibility to address data protection laws to the extent applicable to it. The Seller typically does not obtain or receive access to sensitive personal data about such individual Buyer contacts (e.g., social security number (or non-US equivalent), financial account numbers, and credit or debit card numbers (with or without any required security code, access code, personal identification number or password), health or medical information, criminal history or background, race or ethnic origin, religion, information about sex life or sexual orientation, political affiliation, or trade union membership), and expects the Buyer to specifically notify the Seller before sending such sensitive personal data. The Seller implements standard contractual clauses and other measures to address cross-border data transfer restrictions in data protection laws and provides notice of its data privacy practices (including information about disclosures or transfers of personal data) with regard to such Buyer personal data via its website.

#### **14. TERMINATION**

- 14.1. The Buyer may only terminate a Contract (or any part of a Contract) which the Seller has already accepted, with the Seller's prior agreement in writing and provided the Buyer indemnifies the Seller in full in terms established by the Seller. Cancellation charges may apply to such cancellation including but not limited to: (i) all amounts due under the Contract in respect of work performed and/or Goods delivered up to the date of cancellation, including all applicable overhead and profit; (ii) any sums which have been paid by the Seller or become payable as a result of the cancellation to its subcontractors and supply chain to procure all or any part of the Goods or Services for the Buyer's requirements including all applicable overhead and profit; (iii) the cost of any work, materials and tooling incurred by the Seller, including initial costs, overhead, profit and preparatory expenses allocable thereto, used exclusively by the Seller to supply the Goods and Services; (iv) any non-recurring engineering and project investment costs not paid by the Buyer or recovered by the Seller under the Contract; (v) the costs of settling and paying any losses, damages or claims arising out of the termination of work; and (vi) reimbursing any other reasonable and proper sums suffered or incurred by the Seller solely in connection with or resulting from the cancellation of the Contract including without limitation overhead and the profit the Seller would have earned under the Contract.
- 14.2. The Buyer shall pay the Seller all cancellation charges within thirty (30) days of the date of the Seller's demand.
- 14.3. In the event (a) the Buyer commits a breach of any of its obligations under the Contract and fails to remedy such breach within a period of fourteen (14) days; or (b) the Buyer fails to make payment under the Contract when due, or suspends payments or is unable to pay its debts as they fall due; or (c) of the institution of any proceedings by or against the Buyer, voluntary or involuntary, in bankruptcy or insolvency or for the appointment of an administrator, administrative receiver, receiver or trustee or an assignee for the benefit of creditors of the business or property of the Buyer; or (d) the Buyer suffers or undergoes an analogous event to that mentioned in Section 14.3(b) and (c) in the country in which the Buyer is established; or (e) the Buyer ceases, or threatens to cease, to carry on business; or (f) the Seller reasonably believes that any of the above events is about to occur in relation to the Buyer, then the Seller shall be entitled to cancel the Contract forthwith by written notice without prejudice to any rights arising prior to said cancellation. The Buyer shall pay cancellation charges as set out in this section.

#### **15. FORCE MAJEURE**

- 15.1. The Seller shall not be in breach of the Contract or otherwise liable to the Buyer for any delay or failure in shipment or delivery of the Goods or Services or any other delay or failure to perform its obligations under the Contract due to any cause beyond the reasonable control of the Seller, including, without limitation, war, terrorism, breakdown of plant or machinery, fire, flood, strikes or other labour disturbance, accidents, Act of God, governmental order or requirement, interruption, obsolescence or shortage of materials, transportation facilities or energy supply, or events beyond the reasonable control of its suppliers or subcontractors ("Force Majeure") and the Seller shall be excused from deliveries to the extent that

deliveries may be prevented or delayed by the foregoing Force Majeure. During any such Force Majeure, the Seller will endeavour in good faith to allocate deliveries fairly among its buyers but expressly reserves in its discretion, without liability to the Buyer, the final determination of deliveries to be made. If said Force Majeure continues for a continuous period in excess of ninety (90) days the Seller may terminate the Contract without liability by providing written notice to the Buyer.

#### **16. EXPORT AND GOVERNMENTAL COMPLIANCE**

- 16.1. Each party agrees to comply with all applicable governmental regulations as they relate to the import, export and re-export of information and/or Goods and/or Buyer Property and/or Seller property. Without limiting the foregoing, neither the Buyer nor the Seller shall disclose or deliver any information or Goods and/or Buyer Property and/or Seller property provided hereunder in any manner contrary to any applicable export or import laws and regulations. The Buyer and the Seller acknowledge that these laws and regulations impose restrictions on import, export and transfer to third countries of certain categories of information and goods, and that authorisations/licences from the applicable regulatory agency may be required before such information and Goods and/or Buyer Property and/or Seller property can be disclosed or delivered hereunder, and that such authorisations/licences may impose further restrictions on use and further disclosure or delivery of such information and Goods and/or Buyer Property and/or Seller property.
- 16.2. The Seller shall not be liable for delays or refusals by governmental authorities or other authorities to grant licences or approvals, nor for suspension or revocation thereof, nor for changes in export classification. The Buyer must deliver requested information, including requested end-user information, necessary for export licences to be granted and or necessary for the Seller to determine if a licence or other type of authorisation is required.
- 16.3. In relation to both domestic and international transactions, the Buyer must provide the Seller with export classification information for all Buyer Property and information delivered to the Seller in relation to the Contract. Export classification information includes the applicable export control number, the country of origin and, for hardware only, the Harmonized Tariff Code. The Seller will supply the Buyer with similar export classification information for Goods and/or information for which the Seller has design authority. Each Party will promptly notify the other upon a change in classification information.

#### **17. NOTICES**

- 17.1. Any notice to be given under the Contract shall be sufficient if it is in writing, addressed for the attention of the chief executive officer of the other party, or otherwise as directed by each party from time to time, and delivered personally, or via registered or certified mail (postage prepaid with return receipt requested) (with a request for confirmation in a manner typical to the communication types listed previously). Notice shall be deemed sent and received on the date of actual receipt at the other party's principal place of business.

#### **18. ANTI CORRUPTION, ETHICS AND POLICIES**

- 18.1. The Buyer warrants that its directors, employees, agents, representatives, contractors and subcontractors and any other person acting on its behalf will not: (i) offer, give or agree to give or receive, request or accept any financial or other advantage of any kind as an inducement or reward for doing or not doing any improper act or for the improper performance of any function associated with the order or the Goods or Services; nor (ii) act in any way which would constitute an offence by the Buyer or would cause the Seller to commit an offence under any anti-bribery legislation; nor (iii) employ any workers under the age of 15 nor (iv) fail to comply with applicable anti-slavery legislation.
- 18.2. If the Buyer breaches any of the above warranties, the Seller shall be entitled to terminate the Contract by written notice with immediate effect. Any termination shall be without prejudice to the accrued rights of the Seller.
- 18.3. The Buyer shall indemnify and hold harmless the Seller from any loss, damage and expense, including all legal fees, incurred or sustained by the Seller which is caused by or arises as a result of a breach of any of these warranties.

#### **19. GENERAL**

- 19.1. Nothing in the Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.
- 19.2. The rights and remedies of the Seller in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by the Seller nor by any failure of or delay by the Seller in ascertaining or exercising any such rights or remedies. The waiver by the Seller of any breach of the Contract shall not prevent the subsequent enforcement of the Contract and shall not be deemed to be a waiver of any subsequent breach of that or any other terms and conditions.



- 19.3. If at any time any one or more of the terms of the Contract or any part of one or more of these terms and conditions is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining terms and conditions of the Contract shall not in any way be affected or impaired as a result of that omission.
- 19.4. The Contract sets out the entire agreement and understanding between the Buyer and the Seller in connection with the sale of the Goods and/or Services and shall supersede and replace all documentation previously issued by the Seller or the Buyer. In case of conflict, agreed terms appearing on the face of the Contract shall take precedence over these terms and conditions, and these terms and conditions take precedence over any other documents referred to in the Contract.
- 19.5. Headings are for reference only and shall not affect the interpretation of these terms and conditions.

## **20. LAW AND JURISDICTION**

- 20.1. The Contract shall in all respects be construed according to and governed by the laws of England and Wales.
- 20.2. The United Nations Conventions on Contracts for the International Sale of Goods 1980 shall not apply to any aspect of this Contract.
- 20.3. All disputes arising out of or in connection with the Contract shall be referred to and resolved by binding arbitration in London under the Rules of the London Court of International Arbitration.
- 20.4. Notwithstanding Section 20.3, the Seller may take proceedings or seek remedies before the courts or any competent authority of any country for (i) interim or injunctive remedies in relation to any breach or threatened breach of this Contract or infringement of its intellectual property rights; or (ii) payment to the Seller of any amount which is overdue.

## **21. BREXIT**

- 21.1. Brexit means the UK ceasing to be a member state of the European Union.
- 21.2. A Brexit Trigger Event means any of the following events caused by Brexit or any discussions, proposals, negotiations or any other steps taken by the UK government or a body in any other jurisdiction in anticipation of or related to preparation for Brexit:
  - 21.2.1. Change in Law: a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party. For these purposes, **Law** means any legal provision a party must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, enforceable EU right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;
  - 21.2.2. Trade tariff: in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports of the Goods or any raw materials or components used by the Supplier to manufacture the Goods or any products into which the Goods are to be incorporated or in conjunction with which the Goods are to be commercially exploited;
  - 21.2.3. Licence or consent: in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by a party to perform the agreement or to commercially exploit the Goods including, but not limited to, export licences;
  - 21.2.4. Currency Fluctuation: a change of more than 5% to the rate of exchange of sterling against US Dollar (USD\$), since the price for the Goods was last agreed. The rate of exchange for these purposes shall be the daily spot exchange rate published by the Bank of England;
  - 21.2.5. Other change: change to the business or economic environment in which a party operates which is not caused by 21.2.1 to 21.2.3 above or by any fluctuation in currency exchange rates.
- 21.3. An Adverse Impact means any one of the following:
  - 21.3.1. an adverse impact on the Supplier's ability to perform the agreement in accordance with these terms and the Law;
  - 21.3.2. an increase in the costs incurred by the Supplier in performing the agreement of at least 1% since the price for the Goods was last agreed;
  - 21.3.3. the price of the Goods under this agreement is at least 1% lower than the market value for similar products or services
- 21.4. If a Brexit Trigger Event occurs which has or is likely to have an Adverse Impact, the Supplier may:
  - 21.4.1. require the other party to negotiate an amendment to this agreement to alleviate the Adverse Impact; and
  - 21.4.2. if renegotiation fails, terminate this agreement.

- 21.5. The Supplier may initiate a negotiations by a notice (**Brexit Notice**) giving details of the relevant Brexit Trigger Event and Adverse Impact. On delivery of a Brexit Notice:
  - 21.5.1. the parties shall meet within 7 (seven) days of the date of the Brexit Notice and as reasonably necessary thereafter to discuss in good faith amendments to this agreement;
  - 21.5.2. the Supplier shall comply with all reasonable requests made by the Buyer for additional information and documents relating to the Adverse Impact suffered and the Brexit Trigger Event relied on, always provided that information so disclosed shall be the Supplier's confidential information for the purposes of clause 13 (Confidentiality)
- 21.6. If the parties fail to agree a variation in accordance with clause 5 within 1 month of the date of the Brexit Notice, the Supplier may, without affecting any other right or remedy available to it, terminate this agreement upon written notice to the Buyer.
- 21.7. After delivery of a Brexit Notice, until this agreement is varied or terminated, the parties shall, unless prohibited by law, continue to comply with the terms of this agreement.
- 21.8. Where a party suffers an Adverse Impact as a result of a Brexit Trigger Event, the provisions of this clause shall apply and take precedence over any conflicting express provisions of this agreement.