

## **TERMS OF SALE**

### **1. INTERPRETATION**

Certain words and expressions used in, and principles of interpretation applicable to, these terms are defined or set out in Clause 20 (Definitions), and if there is a conflict or inconsistency between any provision contained in these terms and any provision contained in an Order, except where provided to the contrary in the latter, the Order prevails to the extent of the conflict or inconsistency.

### **2. ORDERS**

#### **2.1 Marketing Material**

- 2.1.1 Any Price, charges, samples, drawings, descriptions, or advertising of or relating to Goods available from the Seller issued or published by the Seller, including those contained in catalogues, brochures or on a website (all or any of these forms of communication being "Marketing Material"), are issued or published in order to give an idea of the goods described in them and the associated charges or prices (as appropriate), and they shall not form part of the Agreement or any other contract of sale of the Goods, or any agreement to sell the Goods, between the Seller and the Customer, or any collateral contract.
- 2.1.2 The Seller is not bound by, and hereby excludes liability for, any error in or omission (other than a fraudulent one) from Marketing Material which is manifest or which ought reasonably to be considered apparent to the Customer, and the Customer undertakes not to rely on any such error or omission, or to enforce rights or bring any claim against the Seller on the basis of the Marketing Material to the extent of such error or omission.
- 2.1.3 The Seller's employees or agents are not authorised to make any statement or other representation concerning the Goods unless confirmed by the Seller in writing, and the Customer undertakes not to rely on, and hereby waives any claim for breach of, any unconfirmed statement or representation which is not made fraudulently.
- 2.1.4 Any advice or recommendation given by the Seller or its employees or agents to the Customer as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon by the Customer entirely at the Customer's risk.

#### **2.2 Rejection of Customer terms**

The Seller is prepared to sell Goods or to enter into an agreement to sell Goods on the provisions of these terms only, to the exclusion of any terms which the Customer purports to apply, whether in an Order or otherwise, which are hereby rejected or (as appropriate) shall be excluded from the Agreement.

#### **2.3 Proposals and Quotations**

- 2.3.1 A proposal, quotation or any similar communication by the Seller is not an offer to sell or supply any Goods, unless it is in writing, expressly described as an offer, and signed by or on behalf of the Seller.

2.3.2 A proposal, quotation or any similar communication is valid only for the period stated in it, and in the absence of a period stated, for ninety (90) days, and is subject to withdrawal or revision by the Seller at any time.

## 2.4 **Ordering procedure**

2.4.1 To order Goods from the Seller, the Customer shall complete and send to the Seller in accordance with Clause 2.4.2 an Order, which constitutes an offer from the Customer open for acceptance by the Seller for a period of ninety (90) days from the date of sending, or such other period as the parties agree in writing (the "Offer Period") and the Order shall be in the form the Seller requires.

2.4.2 The Order shall be sent by post or e-mail to the Seller's address as detailed in the Order, referencing the appropriate Order reference and version number.

2.4.3 During the Offer Period, the Customer is not entitled to amend or cancel the offer. If the Customer wishes to discuss amendments to an offer, the Customer shall request to open negotiations with the Seller for the creation of a revised offer proposal by the Seller which shall be deemed a new Order.

2.4.4 Where the Seller accepts the Customer's offer, it shall notify the Customer within the Offer Period, or such other period as the parties agree in writing, and in default of the Seller doing so within that period, the Order is hereby rejected and the Seller shall have no liability for Losses arising from such unfulfilled Order.

## 2.5 **Nature of Orders**

Each Order gives rise to an Agreement, and each Agreement is separate from each other Agreement, except to the extent provided in the Agreement in question.

## 3. **SALE AND PURCHASE**

### 3.1 **Agreement to sell**

Subject to the Agreement, the Seller shall sell, and the Customer shall buy, the Goods.

### 3.2 **Relief events**

3.2.1 The Seller is discharged from performing the Agreement where, to the extent, and for so long as the following circumstances affect performance:

- (a) Clause 17 (Force Majeure) applies, which shall apply accordingly;
- (b) the Seller has been provided with inaccurate, incomplete or misleading information; or
- (c) the Customer is in breach of the Agreement.

3.2.2 Where Clause 3.2.1 applies, other than Clause 3.2.1(a):

- (a) the Seller shall notify the Customer as soon as reasonably practicable, and shall use its reasonable endeavours to continue to perform the Agreement but shall not be liable for any failure to do so (including any delayed or defective performance); and
- (b) the Customer shall reimburse the Seller on demand in respect of all incremental costs incurred by the Seller in performing the Agreement as a result.

## 4. **PRICE**

### 4.1 **Price**

4.1.1 The Price shall be agreed between the parties on a case by case basis.

4.1.2 The Price is exclusive of value added tax, which shall be added to the Price, and paid by the Customer in accordance with Clause 4.2 (Payment).

4.1.3 The Price is exclusive of the cost of delivery, including transport, packaging, insurance and any taxes, duties or surcharges, which shall be payable by the Customer in addition to the Price.

## 4.2 **Payment**

4.2.1 The Customer shall pay the Price in full when due and without set-off or counterclaim in respect of any liability of the Seller.

4.2.2 Unless otherwise stated, all payments due under the Agreement are subject to the receipt by the payer of a valid value added tax invoice, and shall be paid within thirty (30) days of the end of the calendar month which follows the month during which the relevant invoice is issued.

4.2.3 Any amount due to the Seller is not to be taken to have been made or received for the purposes of the Agreement unless and until the amount is received by the Seller in cash or cleared funds.

4.2.4 If the Customer fails to pay any sum due and payable under the Agreement by the due date, the Seller may suspend delivery of the Goods or cancel any undelivered portion of such Order.

## 4.3 **Default interest**

4.3.1 If the Customer fails to pay any sum due and payable under the Agreement by the due date interest in accordance with Clause 4.2 (Payment) from time to time shall accrue on the unpaid amount from the due date to the date of actual payment (after as well as before judgment); interest shall be calculated on the basis of a year of 365 days and for the actual number of days elapsed, shall accrue from day-to-day, and shall be compounded each month determined from the due date.

4.3.2 For the purposes of Clause 4.3.1, the interest rate shall be five (5) per cent above the base rate of the Bank of England from time to time.

## 5. **OWNERSHIP**

### 5.1 **Passing of title**

Ownership of the Goods passes to the Customer upon the Seller receiving payment in full of the Price and all other amounts due to the Seller from the Customer in respect of any other Goods that the Seller has supplied to the Customer (and not before).

### 5.2 **Retention of title and interim arrangements**

5.2.1 Until ownership of the Goods passes to the Customer, the Seller may at any time recover Goods or resell them before ownership passes to the Customer and the Customer shall:

- (a) hold the Goods as the Seller's fiduciary bailee;
- (b) keep the Goods separate from all other goods held by the Customer and readily identifiable as the property of the Seller;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) not attach to the Goods, or mark the Goods with any trade mark, name, design or logo;

- (e) maintain the Goods in a satisfactory condition, insured on the Seller's behalf for their full Price against all risks; and
  - (f) hold the proceeds of insurance referred to in Clause 5.2.1(e) on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn account.
- 5.2.2 Where the Customer attaches to the Goods, or marks the Goods with, any trade mark, name, design or logo before ownership passes to the Customer, the Customer hereby authorises the Seller (free of charge) to sell the Goods bearing the trade mark, name, design or logo pursuant to the Seller's rights under Clause 5.2.1.
- 5.2.3 The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Customer does so, any monies owing by the Customer shall (without prejudice to any right or remedy to the Seller) become due and payable.
- 5.2.4 The Seller is entitled by its employees or other representatives to enter into the premises of the Customer where the Goods are stored (or where the Seller has reasonable grounds to believe the Goods are stored) without notice:
  - (a) for auditing the Customer's compliance with Clause 5.2.1; or
  - (b) to recover the Goods,and the Customer shall at the request of the Seller procure the right for the Seller, its employees and representatives to enter any premises of any third party where the Goods are stored for either or both of these purposes.

## 6. **DELIVERY**

### 6.1 **General**

- 6.1.1 The Seller shall deliver the Goods, and the Customer shall take delivery of them, in accordance with the Order and otherwise in accordance with this Clause 6 (Delivery).
- 6.1.2 It is a condition of the Agreement that the Customer receives or arranges for the receipt of the Goods when delivery is effected by the Seller and shall provide all necessary labour, materials and plant, prepare the site, and procure all licences and other authorisations required for the Seller or the carrier (as appropriate) to effect delivery in accordance with this Clause 6 (Delivery).

### 6.2 **Method of delivery**

- 6.2.1 Where the Order does not stipulate the method of delivery of the Goods, the Seller is entitled by notice to the Customer either to:
  - (a) oblige the Customer to collect or arrange the collection of the Goods from the Seller's premises in the United Kingdom nominated by the Seller within the period of five (5) Business Days after the date of the Seller's notice, and in default of the Customer doing so, the Seller is deemed to have discharged its obligation to deliver the Goods on the expiry of that period; or
  - (b) arrange for the carriage of the Goods to the delivery address nominated by the Customer within the period of five (5) Business Days after the date of the Seller's notice, and delivery occurs when the Seller gives the carrier custody of, or control over, the Goods, and in default of the Customer notifying the Seller of the delivery address within this period, the Seller is deemed to have discharged its obligation to deliver the Goods on the expiry of that period.
- 6.2.2 Where the Order stipulates the method of delivery of the Goods, delivery shall take place on the earliest to occur of any one of the following, as appropriate to the provisions of the Order:

- (a) where the Goods are in the possession of the Seller as at the date of the Order or will come into the possession of the Seller before delivery, on the Seller:
  - (i) giving to the Customer, its nominee, or any other person having apparent authority to receive them on behalf of the Customer, custody of, or control over, the Goods, and in default of any such person being present at the relevant time, the Seller may effect delivery by leaving the Goods at the delivery address identified in the Order, and in the absence of an address, at any premises of the Customer in the United Kingdom;
  - (ii) agreeing in writing to hold the Goods on behalf of the Customer or its nominee; or
  - (iii) giving any carrier engaged by the Seller (acting reasonably) custody of, or control over, the Goods for the purposes of carriage to the Customer;
- (b) where the Goods are in the possession of the Customer as at the date of the Order or which are to come into the possession of the Customer before delivery, on the transfer of ownership of the Goods in accordance with Clause 5 (Ownership); and
- (c) where the Goods are in the possession of a third party as at the date of the Order or will come into the possession of a third party before delivery, on the third party acknowledging with the consent of the Seller that the Goods are held to the order of the Customer.

### 6.3 **Time for delivery**

- 6.3.1 Unless otherwise stated in the Order, all dates or other times for delivery of the Goods stated in the Order are estimates only, except the Seller shall use its reasonable endeavours to make delivery no later than the date or time stated, and in default of a date or time stated in the Order, the Goods shall be delivered within a reasonable time after the date of the Order, time for which is not of the essence.
- 6.3.2 Where the Order stipulates the date or time for delivery, and the Goods are delivered before that date or time, the Customer shall nevertheless accept delivery.
- 6.3.3 The Customer may not postpone or bring forward the time for delivery of the Goods without the prior consent in writing of the Seller.

### 6.4 **Delay and unfulfilled Orders**

The Seller shall have no liability for delay in delivering or the dispatch of Goods.

### 6.5 **Non-delivery**

Where and for so long as the Seller is discharged from its obligation to deliver the Goods, or where the Customer is in breach of Clause 6.1 (General), the Seller may store the Goods at the risk of the Customer and the Seller's reasonable costs of doing so shall be added to (and form part of) the Price.

## 7. **RISK**

Risk of Loss to the Goods passes to the Customer on delivery.

## 8. **QUALITY**

### 8.1 **Assurance of quality**

Subject to Clause 8.2 (Exclusions), the Seller undertakes that on the date of delivery the Goods shall be in accordance with the Order in all material respects, and otherwise free of material defects in materials and workmanship and compliant with any industrial specifications explicitly included in the Order.

## 8.2 **Exclusions**

- 8.2.1 The Seller is not liable under Clause 8.1 (Assurance of quality) where a defect arises from any or all of the following:
- (a) fair wear and tear;
  - (b) the Goods conforming with information, drawings or Specification supplied by or on behalf of the Customer;
  - (c) alteration of the Goods (other than by or on behalf of the Seller);
  - (d) repair of the Goods (other than by or on behalf of the Seller);
  - (e) abnormal working conditions;
  - (f) failure to follow or to follow fully the Seller's instructions (whether oral or written) or maintenance requirements;
  - (g) the Goods have been improperly installed or connected (unless the Seller carried out the installation and connection);
  - (h) wilful damage, misuse, or negligence; and
  - (i) failure to meet or unsuitability in respect of specific industry standards applicable to the Goods.
- 8.2.2 Clause 8.1 (Assurance of quality) does not extend to parts, materials or equipment not manufactured, connected or installed by the Seller.

## 8.3 **Manufacturer's warranty**

To the extent the Seller is able to do so without obtaining the consent of any third party, the Seller hereby assigns the benefit of any warranty or other assurance of quality applicable to the Goods issued by any third party manufacturer or subcontractor (in respect of installation) of them with effect from the date of acceptance of the Goods by the Customer or payment of the Price in full, whichever is the later.

## 9. **ACCEPTANCE**

### 9.1 **Duty to accept**

- 9.1.1 Where any of the Goods meet the requirements of Clause 8.1 (Assurance of quality) in all material respects, the Customer shall accept all of the Goods, including those which do not do so.
- 9.1.2 The Customer shall accept all of the Goods which meet the requirements of Clause 8.1 (Assurance of quality) in all material respects, and may reject or accept the Goods which do not do so, provided the breach is not so slight that it would be unreasonable for the Customer to reject the Goods.
- 9.1.3 Where all of the Goods meet the requirements of Clause 8.1 (Assurance of quality) in all material respects, the Customer shall accept them, and in any other case the Customer shall either reject or accept all, and not some only, of the Goods, except the Customer shall not reject where the breach is so slight that it would be unreasonable for the Customer to reject the Goods.
- 9.1.4 Clause 9.1.1 applies to each instalment of the Goods and not to the aggregate of the instalments.
- 9.1.5 Clause 9.1.1 applies to all of the Goods, and not to each instalment of them.

## 9.2 **Acts or omissions constituting acceptance**

Without affecting acceptance of the Goods in accordance with applicable law, and subject to Clause 10 (Inspection), the Customer shall be taken to have accepted the Goods:

- 9.2.1 where the Customer asks for, or agrees to, their repair or replacement under Clause 9.3 (Remedies); or
- 9.2.2 if the Goods are delivered to a third party under a sub-sale or other disposition.

## 9.3 **Remedies**

- 9.3.1 Subject to prior agreement in writing with the Customer, where the Goods delivered are Defective Goods, the Customer shall in accordance with the Seller's instructions, return the Defective Goods to the Seller, or make them available for collection by the Seller.
- 9.3.2 In the event the Customer has been notified to the Seller pursuant to condition 9.3.1, the Seller shall repair or replace the Goods free of charge or, at the Seller's option, refund to the Customer the price of the Goods or Services (or a proportionate part of the price), but the Seller shall have no further liability to the Customer.
- 9.3.3 If the Customer is entitled to reject the Goods because all or part of the Goods are defective, the Customer must reject all of the Goods and cannot keep some of the Goods and reject the remainder.

## 10. **INSPECTION**

### 10.1 **Inspection period**

The Customer has a reasonable period, not exceeding fourteen (14) days after delivery of the Goods, in which to inspect them against the requirements of:

- 10.1.1 Clause 6 (Delivery); and
- 10.1.2 Clause 8.1 (Assurance of quality),

and to notify the Seller of the inspection undertaken, and (as the case may be) any shortfall in delivery, any defects revealed, and whether the Goods are rejected in accordance with Clause 9.1 (Duty to accept).

### 10.2 **Consequences of failure to notify**

In default of a notice under Clause 10.1 (Inspection period) within the period to which Clause 10.1 (Inspection period) refers, notifying the Seller of:

- 10.2.1 any breach of Clause 6 (Delivery), the Seller is deemed to have complied with Clause 6 (Delivery); or
- 10.2.2 any defects revealed by the inspection, the Customer is deemed to have accepted the Goods to the extent required by Clause 9.1 (Duty to accept).

## 11. **SELLER'S REMEDIES**

### 11.1 **Set-off**

11.1.1 The Seller is entitled from time to time without notice to the Customer both before and after demand to set-off against any amount:

- (a) held by the Seller and paid by or on behalf of the Customer, whether under the Agreement or otherwise, including the Price; or

- (b) due to the Customer from the Seller, whether in respect of any liability of the Seller under or in connection with the Agreement or otherwise,

any Losses incurred or sustained by the Seller by reason of the breach of the Agreement by the Customer, or the negligence, fraud or wilful misconduct of the Customer.

11.1.2 Where the Seller holds amounts paid by or on behalf of the Customer for more than one purpose, the Seller is entitled to elect which amounts it exercises its rights of set-off against and the Order in which it does so.

11.1.3 The Seller shall account to the Customer for the balance (if any) of the Price or other amounts paid by the Customer after exercising the Seller's rights of set-off under Clause 11.1.1.

## 11.2 **Suspension or stoppage of the Goods in transit**

Where the Customer fails to pay the Price in full on or before the due date, whether or not an Insolvency Event has occurred in relation to the Customer, the Seller is entitled to suspend or stop the transmission, and resume possession, of all or any of the Goods until payment is received, and the costs of the Seller doing so are for the Customer's account.

## 11.3 **Re-sale of the Goods**

11.3.1 The Seller is entitled to terminate the Agreement and re-sell the Goods (without being under a duty of care to the Customer in relation to the Price) where the Customer:

- (a) fails to pay any of the Price in full when due;
- (b) fails to take delivery of the Goods in breach of Clause 6.1.2 (General); or
- (c) rejects the Goods in breach of Clause 9.1 (Duty to accept),

and the Seller shall give notice of its decision to re-sell or the re-sale of the Goods (as appropriate) as soon as reasonably practicable.

11.3.2 The Seller may exercise its right of re-sale notwithstanding ownership of the Goods has passed to the Customer; pending resale by the Seller, provided notice of the Seller's decision to do so has been given under Clause 11.3.1, the Customer shall not deal with, agree to sell, sell, grant any charge or other encumbrance over or in respect of, or part with possession of, the Goods.

## 11.4 **Measurement of damages**

11.4.1 Subject to Clause 11.4.2, the following kinds of Loss if established to have been sustained or incurred by the Seller and caused by any breach of the Agreement by the Customer, any wilful misconduct, negligence or other tortious liability of the Customer in connection with the Agreement (including breach of statutory duty) or fraud by the Customer (each being a "Default") is recoverable from the Customer by the Seller:

- (a) Losses arising from the storage or carriage of the Goods or retaking possession of the Goods;
- (b) loss of profit on the sale of the Goods to the Customer;
- (c) Losses (including the cost of management time and the time of other staff) attributable to the investigation and rectification of the Default;
- (d) all Losses (including management time and time of other staff) wasted or rendered futile as a result of the Default.

11.4.2 Nothing in Clause 11.4.1 entitles the Seller:

- (a) to recover damages which would place the Seller in a better position than if the Default had not occurred; or
- (b) where the Seller has incurred or sustained Loss under more than one head of Loss referred to in Clause 11.4.1, to recover damages under more than one head of Loss where under any applicable law the Seller is required to elect which head of Loss to claim.

## 12. **INDEMNITY**

12.1 The Customer shall indemnify the Seller against all liabilities or Losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller:-

12.1.1 arising out of or in connection any third party claim made against the Seller for actual or alleged infringement of a third party's intellectual property in connection with the Goods to the extent that the Goods are to be manufactured in accordance with the Specification supplied by the Customer or otherwise;

12.1.2 towards the Customer's property, employees, agents or contractors.

## 13. **TERMINATION**

### 13.1 **Termination for breach**

The Seller may by giving notice to the Customer terminate any Agreement formed in accordance with these terms as from the date of expiry of the notice if the Customer commits a breach of the Agreement which, in the case of a breach capable of remedy, is not remedied within thirty (30) Business Days after Seller has given notice containing details of the breach, and requiring the breach to be remedied.

### 13.2 **Termination for Insolvency Event**

The Seller may at any time, by notice to the Customer, terminate any Agreement formed in accordance with these terms as from the date of expiry of the notice if an Insolvency Event occurs in relation to the Customer.

### 13.3 **Accrued rights and survival**

Termination of the Agreement does not affect:

13.3.1 the rights or liabilities of the parties which have accrued on or before termination; and

13.3.2 the continuance in force of Clauses 11 (Seller's remedies), 12 (Indemnity) 15 (Liability) and 16 (Confidentiality), which survive termination of the Agreement; and

13.3.3 the enforceability of any other Agreement formed in accordance with these terms.

## 14. **WARRANTIES**

Each of the Seller and the Customer represents, warrants and undertakes to the other that it has full power and authority to enter into and perform its obligations under the Agreement.

## 15. **LIMITATION OF LIABILITY**

### 15.1 **Financial Loss**

15.1.1 The Seller's total financial liability for all Events of Default in each period of twelve (12) calendar months or part thereof (a "Contract Year") during the term of the Agreement shall not exceed an amount equal to the aggregate Price paid from time to time during the Contract Year or a fixed sum of two million pounds (£2,000,000) (whichever is lower), except that nothing in the Agreement shall affect the liability of the Seller for death or personal injury, fraud, or any other liability to the extent it cannot be excluded or limited by law.

- 15.1.2 Notwithstanding Clause 15.1.1, the Seller's total financial liability for all Asbestos Events of Default in each Contract Year during the term of this Agreement shall not exceed an amount equal to the aggregate Price paid from time to time during the Contract Year or a fixed sum of fifty thousand pounds (£50,000) (whichever is lower).
- 15.1.3 The monetary limitations set out in this Clause 15 (Financial Loss) shall not apply to the obligation of the Customer to pay the Price in accordance with the Agreement.

## 15.2 **Consequential Loss**

In no event shall the Seller be liable, whether for breach of contract, any tortious act or omission (including negligence) or otherwise, under or in connection with the Agreement for any Loss for which the Customer has assumed the risk under the Agreement, loss of profit, loss of reputation, loss of business, revenue or goodwill, anticipated savings, loss or damage to data, or for any consequential or indirect loss, and regardless of whether the loss or damage would arise in the ordinary course of events, is reasonably foreseeable, is in the contemplation of the parties, or otherwise.

## 15.3 **Exclusion of implied terms**

All warranties, conditions or terms not set out in the Agreement and which would otherwise be implied or incorporated into the Agreement by statute, common law or otherwise (other than as to title to Goods) are hereby excluded except to the extent they may not be excluded or limited by law.

## 15.4 **No claims**

- 15.4.1 The Customer undertakes that it shall not bring any claim against any individual employee or officer of the Seller in respect of or relating to the Seller in connection with or arising from the Agreement.
- 15.4.2 Each individual to which Clause 15.4.1 refers is a beneficiary under that Clause, and may enforce the benefit of it under the Contracts (Rights of Third Parties) Act 1999, except that the parties may rescind or vary Clause 15.4.1 without the consent of the relevant individual.

## 15.5 **Acknowledgement**

- 15.5.1 The Price is determined on the basis of the exclusions from and limitations of liability contained in the Agreement.
- 15.5.2 The Customer accepts that these exclusions and limitations are reasonable because of (amongst other matters) the likelihood that otherwise the amount of damages awardable to the Customer for an Event of Default of the Seller may be disproportionately greater than the Price.
- 15.5.3 The Seller is willing to arrange for additional insurance cover to enable the Seller to take on the burden of additional liability to the Customer provided that the Customer pays the Seller a commensurately higher amount than the Price.
- 15.5.4 If the Customer wishes the Seller to obtain a quotation for additional insurance cover accordingly, the Customer shall notify the Seller as soon as reasonably practicable after the date of the Order.

## 16. **CONFIDENTIALITY**

### 16.1 **Undertakings of confidentiality**

- 16.1.1 Each party undertakes to the other in relation to the Confidential Information of the other:
- (a) to keep confidential all Confidential Information;

- (b) not to disclose Confidential Information without the other's prior written consent to any other person except those of its employees who have a need to know the Confidential Information;
- (c) not to use Confidential Information except for the purposes of performing its obligations under the Agreement (and in particular not use Confidential Information to obtain a commercial, trading or any other advantage); and
- (d) to keep separate from all other information all Confidential Information in its possession or control.

16.1.2 The provisions of Clause 16.1.1 shall not apply to Confidential Information to the extent that it is or was:

- (a) already in the possession of the other free of any obligation of confidentiality on the date of its disclosure;
- (b) in the public domain other than as a result of a breach of this Clause 16.1 (Undertakings of Confidentiality);
- (c) required to be disclosed:
  - (i) pursuant to applicable law, or the rules of any exchange on which the securities of a party are or are to be listed; or
  - (ii) in connection with proceedings before a court of competent jurisdiction or under any court order or for the purpose of receiving legal advice,

but only to the extent and for the purpose of that disclosure.

## 16.2 **Damages not an adequate remedy**

Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of Clause 16.1 (Undertakings of Confidentiality) and accordingly a party will be entitled, without proof of special damage, to an injunction and other equitable relief for any actual or threatened breach of Clause 16.1 (Undertakings of Confidentiality).

## 17. **FORCE MAJEURE**

### 17.1 **Effect of Force Majeure**

If the Seller is prevented, hindered or delayed from or in performing any of its obligations under the Agreement by a Force Majeure Event then:

- 17.1.1 to the extent that the Seller is so prevented hindered or delayed, the Seller's obligations under the Agreement shall be suspended for so long as the Force Majeure Event continues and;
- 17.1.2 as soon as reasonably possible after commencement of the Force Majeure Event which prevent, hinders or delays the Seller from fulfilling its obligations the Seller shall notify the Customer of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event and the effects of the Force Majeure Event on its ability to perform its obligations under the Agreement;
- 17.1.3 where the Seller is prevented, hindered or delayed from fulfilling its obligations by a Force Majeure Event it shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under the Agreement; and
- 17.1.4 as soon as reasonably possible after the cessation of the Force Majeure Event where the Seller is prevented, hindered or delayed from fulfilling its obligations by a Force Majeure Event, it shall notify the Customer in writing of the cessation of the Force

Majeure Event and shall resume performance of its obligations under the Agreement and take all reasonable steps to recover any slippage.

17.2 **Termination as a result of a Force Majeure Event**

If any Force Majeure Event prevents, hinders, or delays performance of all or any part of the obligations of the Seller for more three (3) calendar months, then by notice to the affected party, the other may terminate the Agreement without liability as of the date specified in the notice.

18. **RIGHTS OF THIRD PARTIES**

Except as provided in the Agreement, the Agreement does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it.

19. **GENERAL**

19.1 **Entire Agreement and amendments**

19.1.1 This Agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all representations, including all pre- contract misrepresentations and misstatements negligently or innocently made, agreements, negotiations or understandings between the parties, except that this Clause 19.1.1 does not affect the liability of either party for any fraudulent misrepresentation.

19.1.2 Each of the parties represents, warrants and undertakes that:

(a) in entering into the Agreement, the party does not rely on any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement; and

(b) it shall not claim any remedy in respect of statements, representations, warranties or understandings made or repeated in the Agreement or in relation to the Agreement, other than breach of contract, and which shall be to the exclusion of any other remedy in respect of such statements, representations, warranties or understandings upon which it may have relied in entering into the Agreement, whether for misrepresentation or otherwise.

19.1.3 An amendment to the Agreement is ineffective unless it is in writing, expressly purports to amend the Agreement and is signed by both parties.

19.2 **Remedies general**

19.2.1 The rights and remedies of the Seller provided by the Agreement are cumulative and (unless otherwise provided in the Agreement) are not exclusive of any rights or remedies of the Seller provided by law or in the Agreement.

19.2.2 The rights of the Customer under the Agreement are the Customer's only rights relating to the subject matter of the Agreement, and are to the exclusion of any other rights of the Customer provided by law, other than the right to claim damages for breach of contract which is not otherwise excluded by the Agreement.

19.3 **Notices**

Any notice to be given by either party to the other under the Agreement must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes. Notices shall be delivered personally or sent by first class post. A notice is deemed to have been received if sent by prepaid first class post, on the second working day after posting (excluding the day of posting). In proving service of the notice, it shall be sufficient to show that delivery by hand was made or that the envelope containing the notice was properly addressed and posted as a first class pre-paid letter..

#### 19.4 **Waiver**

Any failure or neglect by the Seller to enforce any of the provisions of the Agreement shall not be construed nor deemed to be a waiver of the Seller's rights and does not affect the validity of the whole or part of the Agreement nor prejudice the Seller's rights; any waiver by the Seller of its rights under the Agreement does not operate as a waiver in respect of any subsequent breach.

#### 19.5 **Invalidity**

If any provision of the Agreement is held to be illegal, invalid or unenforceable in whole or part, that provision shall to that extent be deemed not to form part of the Agreement and the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.

#### 19.6 **Assignment and sub-contracting**

19.6.1 The Customer shall not without the prior written consent of the Seller assign, transfer, charge, dispose of, deal with or subcontract its rights or obligations under the Agreement.

19.6.2 The Seller may assign its rights under the Agreement, including the right to receive the whole or part of the Price.

#### 19.7 **No partnership**

Nothing in the Agreement shall or shall be deemed to create a partnership between the parties.

#### 19.8 **Governing law**

This Agreement shall be governed by and construed in accordance with English law.

#### 19.9 **Jurisdiction**

The courts of England and Wales shall have non-exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Agreement.

### 20. **DEFINITIONS**

#### 20.1 **Meanings**

In the Agreement, unless the context otherwise requires, the following definitions apply:

"Agreement"	the agreement between the Seller and the Customer comprised of the Order and these terms;
"Asbestos Event(s) of Default"	a breach by the Seller of the Agreement, including any wilful or deliberate breach of contract, tortious act or omission (including negligence), breach of statutory duty, misrepresentation or misstatement of the Seller in connection with the Agreement arising out of the manufacture, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to asbestos or materials or products containing asbestos whether or not there is another cause of Loss which may have contributed concurrently or in any sequence to a Loss in respect of any Goods which may or may not contain asbestos;
"Business Day"	Monday to Friday excluding public and bank holidays in England and Wales;
"Confidential Information"	in relation to the Customer or the Seller, all information and trade secrets relating to its business or customers which come into the possession of the other party pursuant to the Agreement, whether orally, or in documentary, electronic or other form;
"Customer"	the purchaser of the Goods under the Agreement, identified in the Order;
"Defective Goods"	any Goods which do not meet the requirements of Clause 8.1 (Assurance of quality);
"Event(s) of Default"	a breach by the Seller of the Agreement, including any wilful or deliberate breach of contract; and a tortious act or omission (including negligence), breach of statutory duty, misrepresentation or misstatement of the Seller in connection

“Force Majeure Event”	with the Agreement; any event which is beyond the reasonable control of the Seller, and which affects the Seller’s performance, including acts of God, war, terrorism, fire, and natural disasters, including industrial action of the Seller’s staff;
“Goods”	the goods identified in the Order, or any of them;
“Insolvency Event”	each and any of the following in relation to the Customer or the Seller (being the “Relevant Party”): (a) any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Relevant Party (except that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction); (ii) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the Relevant Party or any of its assets; (iii) the enforcement of any security over any assets of the Relevant Party; or (iv) the expropriation, attachment, sequestration, distress or execution over or affecting any material asset of the Relevant Party;  (b) the Relevant Party is unable to pay its debts as they fall due or is insolvent; or  (c) the Relevant Party enters into a composition or arrangement with its creditors or any class of them;
“Loss” and “Losses” “Order”	includes all loss, damage, cost and expense; a binding order, in the form the Seller requires (including the draft offer proposal document produced by the Seller and agreed by the Customer), for the purchase of the Goods at the Price, placed by the Customer and accepted by the Seller;
“Price”	the price of individual Goods or Goods of a given description stated in the Order, and not the aggregate amount of all such prices;
“Seller” “Specification”	Photon Fire Limited (Company Number 04503061); and means the Customer’s specification which may be produced by the Seller and agreed by the Customer.

## 20.2 **References**

References to:

- 20.2.1 “Clauses” are to clauses of the Agreement;
- 20.2.2 a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it except that, as between the parties, no modification, consolidation or re-enactment shall apply for the purposes of the Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, either party;
- 20.2.3 either party includes, where appropriate, persons deriving title under it;
- 20.2.4 “subsidiary” and “holding company” shall have the meanings given to them by section 1159 of the Companies Act 2006;
- 20.2.5 “includes” or “including” shall be construed without limitation to the generality of the preceding words;

20.2.6 any document (including the Agreement) or a provision of it shall be construed as a reference to that document or provision as amended from time to time by agreement between the parties in accordance with the Agreement; and

20.2.7 "writing" includes any method of reproducing words in a legible and non-transitory form, excluding e-mail; and

20.2.8 the singular includes the plural and vice versa.

20.3 **Headings**

The headings are for convenience only and shall not affect the interpretation of the Agreement.