

## TEDDINGTON ELECTRONICS LTD

### TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

#### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**“Artwork”** means any image or design provided in any form (including, without limitation, any artwork embodied in any CAD data, gerbers and/or stencils) to the Company by the Customer for use by the Company in the performance of any Services or the production of any Goods.

**“Attainment”** means the Company's confirmation that a Test Product has met or exceeded the Prescribed Standards.

**“Bill of Materials (BOM)”** means the parts list of components required in order to complete a saleable end-item.

**“Conditions”** means the standard terms and conditions of sale set out in this document as amended from time to time in accordance with clause 2.4 and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company.

**“Confidential Information”** means any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential or the information could reasonably be supposed to be confidential.

**“Company”** means Teddington Electronics Limited, a company registered in England and Wales with registered number 05763831 whose registered office is at Teddington Building, Stennack Road, Holmbush, St. Austell, Cornwall PL25 3HG.

**“Contract”** means any contract between the Company and the Customer for the Supply of any Goods and/or Services, incorporating these Conditions.

**“Customer”** means the person, firm or company who purchases the Goods and/or Services from the Company.

**“Customer Return Number”** the Customer Return Number the Company will in its sole discretion provide the Customer with in accordance with clause 4.11.

**“Delivery Point”** means the place where delivery of the Goods is to take place under Condition 4.

**“Due Date”** means the due date for payment in accordance with Condition 8.1.

**“Engineering Change Note (ECN)”** means the Company's written confirmation of approval of an ESR, which may in the Company's sole discretion be issued by the Company, but without which no ESR shall be deemed approved.

**“Engineering Service Request (ESR)”** means any change, verbally or in writing, to any manufacturing instructions submitted by the Customer to the Company verbally or in writing, including, but without limitation, any change to any BOM.

**“Force Majeure Event”** has the meaning given to it in clause 14 of these Conditions.

**“Free Issue Materials”** means any materials provided to the Company by the Customer for use by the Company in the performance of any Services, or the production of any Goods.

**“Goods”** means any goods agreed in the Contract to be produced by the Company for the Customer and/or sold by the Company to the Customer (including any part or parts of them).

**“Input Material”** means any documents or other materials, and any data or other information provided to the Company by the Customer relating to the Goods and/or Services, including, without limitation, any Artwork, BOM, ESR and/or Free Issue Materials.

**“Intellectual Property Rights”** means any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered.

**“Prescribed Standards”** means such standards as the Customer requires the Company to test any Test Product against, as part of the requested Services.

**“Order”** means the Customer's order for the supply of Goods and/or Services.

**“Sales Order Acknowledgement”** means a confirmation, entitled 'Acknowledgement' and sent from the Company to the Customer either by post or e-mail, confirming the price of any Goods and/or Services together with, where applicable, the quantity of and delivery date for any Goods and/or a description of any Services to be performed and the date the Services will be performed.

**“Services”** means any services agreed in the Contract to be performed by the Company for the Customer (including any part or parts of them) including, but not limited to, any Services to be performed in relation to any Goods.

**“Stock Goods”** Goods that are sold, without modification, from the Company's standard goods stock that have not been produced specially for a Customer's Order.

**“Supply”** means the sale of any Goods and/or the provision of any Services by the Company to the Customer. For the avoidance of doubt, any Goods so sold, and/or Services so provided, (or to be so sold or provided, as applicable), are supplied.

**“Test Procedure”** means any test, using such testing criteria developed by the Company that the Customer has requested the Company to perform on any Test Product in order to verify whether a Test Product complies with the Prescribed Standards.

**“Test Product”** means any goods which the Company has agreed to test and/or inspect pursuant to the Customer's request to provide the Services.

**“writing”** includes any communication effected by email, telex, cable, facsimile transmission or any comparable means.

1.2 **Construction.** In these Conditions, the following rules apply :

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time;
- (d) 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;
- (e) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (f) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular; and
- (g) the headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.4 the Contract shall be on these Conditions 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 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.3 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.
- 2.4 These Conditions apply to the Supply of any and all Goods and Services by the Company and any variation to these Conditions and any representations about any Goods and/or Services shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.5 Each order or acceptance of a quotation for Goods and/or Services by the Customer from the Company shall be deemed to be an offer by the Customer to procure Goods and/or Services subject to these Conditions.

- 2.6 No order placed by the Customer shall be deemed to be accepted by the Company until a Sales Order Acknowledgment is issued by the Company.
- 2.7 Without prejudice to the provisions of Condition 2.4, if the Customer wishes to change any Order, (which, for the avoidance of doubt shall include, but shall not be limited to, any amendment, addition or substitution with respect to any Input Material and/or any specification), any such change is subject to acceptance by the Company and the Customer must pay any additional charges associated with fulfilling the changed Order.
- 2.8 The Customer shall ensure that the terms of its Order and any Input Material and/or any applicable specification are complete and accurate and are submitted to the Company within a sufficient time period such as will enable the Company to fulfill the Company's obligations under the Contract. Without limitation and without prejudice to any other Condition, the Company shall not be liable for any delay in delivering any Goods and/or performing any Services if such delay, or the reason for such delay, could be attributed, directly or indirectly, to the Customer.
- 2.9 Any quotation is given on the basis that no Contract shall come into existence until the Company issues a Sales Order Acknowledgment. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

### **3. DESCRIPTION**

- 3.1 The quantity and description of any Goods and/or Services shall be as set out in the Company's quotation or Sales Order Acknowledgement.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract and the Company does not provide sale by sample.
- 3.3 Any and all Artwork shall be submitted in such formats and shall meet such standards as may be prescribed by the Company from time to time, at the Company's absolute discretion. The Company reserves the right to refuse to perform any Services or produce any Goods if any Artwork is not submitted in the format prescribed, or does not meet the standard prescribed, in each case by the Company. Without limitation, if the Company is requested to prepare any Artwork for a Customer or to assist any Customer in the preparation of any Artwork, any and all additional charges therefore shall be payable by the Customer. Details of any formats and standards prescribed by the Company for the submission of Artwork may be obtained by contacting the Company.
- 3.4 The Customer shall be responsible for delivering any and all Free Issue Materials to the Company's premises, unless otherwise agreed in advance with the Company and the Customer shall, unless otherwise so agreed, also pay any and all costs associated with them.
- 3.5 All Free Issue Materials shall be handled by the Company at the Customer's own risk. Any surplus or waste materials derived from any Free Issue Materials may be disposed of by the Company at the Customer's cost, (if any) unless otherwise agreed with the Company in advance.
- 3.6 The Customer shall be responsible for ensuring that there is no defect or deficiency in any Free Issue Materials prior to any delivery thereof to the Company pursuant to Condition 3.4. Without limitation, the Company accepts no liability for any loss or damage arising from any defective or deficient Free Issue Materials, however caused and the Customer shall hold the Company harmless and shall fully indemnify the Company with respect to any claim made by or against the Company in respect of any liability, loss, damage, injury, cost or expense so sustained. The Company reserves the right to refuse to perform any Services or produce any Goods in relation to any defective or deficient Free Issue Materials where any such defect or deficiency is not remedied prior to any such commencement of performance, or production, as applicable. Without limitation, if the Company agrees to attempt to remedy the defect or deficiency or to assist the Customer in so doing, the Customer shall pay any additional charges imposed by the Company as a result.
- 3.7 If any Goods are to be manufactured, designed, built or configured and/or any process is to be applied to any Goods by the Company in accordance with any Input Material and/or any specification submitted by the Customer, the Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by, the Company, in settlement of any claim for infringement of any patent, copyright, design, trade mark or any other intellectual property right of any other person resulting from the Company's use of any Input Material and/or any specification so submitted.
- 3.8 All Goods shall be Supplied by the Company to any standard commercial tolerances that apply within the appropriate industry, unless the Customer notifies the Company in its order of any special tolerances that the Customer requires.
- 3.9 The Customer shall be solely responsible for ensuring the suitability of any Goods for any specific purpose.

#### 4. DELIVERY AND RETURNS

The Company only delivers within the United Kingdom, unless otherwise agreed between the Customer and the Company's export department, who will advise the Customer regarding any and all terms and conditions and the delivery charges applicable to export orders.

- 4.1 Unless otherwise agreed in writing by the Company, and without prejudice to Condition 4.1, delivery of the Goods shall take place at the Customer's place of business. All carriage charges, including, without limitation, all costs in relation to transport, insurance and unloading, shall be borne by the Customer. In the case of Services, performance shall be deemed to be when the Company completes the performance of the Services at the Customer's premises or at some other place for performance agreed to by the Company.
- 4.2 Any dates specified by the Company for delivery of the Goods or the performance of Services are intended to be an estimate and time for delivery shall not be of the essence in the Contract. If no dates are so specified, delivery shall be within a reasonable time. Should expedited delivery be agreed, the Company reserves the right to levy an extra delivery charge. The Company shall not be liable for any delay in the delivery of the Goods and/or performance of the Services that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of Goods and/or the performance of the Services. The Goods may be delivered or the Services performed by the Company in advance of the quoted delivery or performance date upon giving reasonable notice to the Customer.
- 4.3 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or delay in the performance 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 in accordance with clause 14.
- 4.4 If for any reason the Customer fails to accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
  - (b) the Goods shall be deemed to have been delivered; and
  - (c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); or
  - (d) the Company may sell the Goods at the best price readily obtainable and (after deducting any reasonable costs and expenses in connection with the storage and expedited sale of the Goods), charge the Customer for any shortfall below the price for the Goods.
- 4.5 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 4.6 If delivery involves difficult access to or at the Delivery Point and/or the Delivery Point is located at an unreasonable distance from any feasible vehicular access point, the Company reserves the right in its sole discretion to levy an extra delivery charge.
- 4.7 If the Company delivers to the Customer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.8 The Company may deliver the Goods and/or perform the Services by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.9 Each installment shall be a separate Contract and no cancellation or termination of any one Contract relating to an installment shall entitle the Customer to repudiate or cancel any other Contract or installment.
- 4.10 With respect to the return of any non-faulty Goods, only Stock Goods may be returned to the Company who may at its sole discretion provide a replacement or refund, up to 28 days from the date of delivery. Prior to returning any Goods to the Company, a Customer must contact the Company to obtain a Customer Return Number and details of the address to which the Goods must be returned. Customers must include the details of the Customer Return Number with the Goods before returning any Goods to the Company. Without limitation, no replacement or refund will be made with respect to any Goods that are:
- (a) returned to the Company without a properly attached Customer Return Number, or
  - (b) received by the Company more than 14 days after the date of the email notifying the Customer of their Customer Return Number. Goods must be returned in their original packaging and in the condition in which they were

received by the Customer.

- 4.11 The Company shall not be responsible for any damage to the Goods or any loss thereof in transit. The Customer must pay the return carriage charges.

## **5. NON-DELIVERY**

- 5.1 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.
- 5.2 The Company shall not be liable for any non-delivery of the Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 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.

## **6. RISK/TITLE**

- 6.1 The Goods are at the risk of the Customer from the time of delivery.
- 6.2 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:
- (a) the Goods; and
  - (b) all other sums which are or which become due to the Company from the Customer on any account.
- 6.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
  - (b) store the Goods (at no cost to the Company) 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;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.
- 6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Customer's business at full market value;
  - (b) 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;
  - (c) the proceeds of any such sale shall be held by the Customer as the Company's bailee and in a fiduciary capacity;
  - (d) if the Customer has not received the proceeds of any such sale as referred to in and pursuant to Condition 6.4 (c) it will, if called upon to do so by the Company, assign to the Company within seven days after being required in writing so to do by the Company, all rights against the person or persons by whom the proceeds are owed.
- 6.5 The Customer's right to possession of the Goods shall terminate immediately if:
- (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the

Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

(b) the Customer suffers or allows any execution distress or diligence, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or a secured lender to the Customer takes any steps to obtain possession of the secured property or otherwise enforce its security or the Customer ceases to trade; or

(c) the Customer encumbers or in any way charges any of the Goods.

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

6.7 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 otherwise located, but in any event, and without limitation, hereby undertakes to secure access at any time to any such premises for the Company, its agents and employees in order to inspect the Goods, or, where the Customer's right to possession has terminated, to recover them.

6.8 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.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this Condition 6 shall remain in effect.

## **7. PRICE**

7.1 Unless otherwise agreed by the Company in writing, the price for any Goods and/or Services shall be the price set out in the quotation or Sales Order Acknowledgment sent to the Customer.

7.2 The price for the Goods and/or Services shall be exclusive of any value added tax which shall be payable by the Customer to the Company at the current prevailing rate. The price of any Goods shall additionally be exclusive of all costs and charges in relation to packaging, loading, unloading, carriage and insurance.

7.3 The Customer shall pay to the Company any additional sums which, in the Company's sole discretion, are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Customer. The Company reserves the right to increase the price of any Goods or Services due to any change in delivery dates, quantities or specifications for the Goods or the Services requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

## **8. PAYMENT**

8.1 The price for any Goods and/or Services shall be paid by the Customer to the Company on the Due Date, as follows:

(a) If the Company has agreed monthly credit terms with the Customer, the Company's invoices must be paid by the last day of the month following the date of the invoice; or

(b) If no credit terms have been agreed, then full payment must be made when the Customer's Order is placed.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds. In the event that the Customer tenders payment by cheque and the cheque is returned unpaid to the Company, the Customer shall reimburse the Company for any bank charges incurred by the Company as a result.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

8.6 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the Due date for payment at the annual rate of rate of 4 per cent per annum

above the Bank of England base rate from time to time accruing on a daily rate from the Due Date until payment in full is made, whether before or after judgment, and compounding quarterly. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Customer shall reimburse the Company for any and all costs incurred by the Company in recovering payment pursuant to this Condition 8.

- 8.7 Without prejudice to Condition 8.6, any failure by the Customer to pay the Company any sum by the Due Date for payment and/or the occurrence of any one or more of the events set forth in Condition 6.5 shall entitle the Company, at any time and without notice to the Customer and without limitation to any other remedy available to the Company under these Conditions, the Contract, or otherwise:
- (a) to suspend or cancel the further delivery of any Goods or the performance of any Services, including, without limitation, stopping the delivery of any Goods in transit
  - (b) to withdraw or reduce any agreed monthly credit limit; and
  - (c) to treat the Contract as having been repudiated by the Customer.
- 8.8 The Customer may not cancel any order for Goods and/or Services for which a Sales Order Acknowledgment has been issued by the Company pursuant to Condition 2.6 and if the Customer cancels, or purports to cancel any such order (or the Contract or any part thereof), then the Company may, by notice in writing to the Customer, elect to treat the Contract as repudiated.
- 8.9 For the avoidance of doubt, and notwithstanding the exercise of any remedy by the Company in accordance with Condition 8.7 or 8.8, or under any other of these Conditions, the Contract, or otherwise, the Customer shall remain liable to pay and shall pay the Company at the Contract rate, any and all payments subsisting at the relevant time. In particular but without limitation, if any further deliveries are suspended or cancelled in accordance with clause 8.7 above the Customer shall still be liable for any invoices issued by the Customer in respect of any Goods included in such suspended and/or cancelled deliveries. Once these invoices are paid in cleared funds the Company shall deliver the Goods covered by the invoice to the Customer;

## **9. WARRANTIES**

- 9.1 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.
- 9.2 The Company warrants that (subject to the other provisions of these Conditions) the Goods shall be free from any defects in material and workmanship at delivery and for a period of twelve months from the date of delivery.
- 9.3 The Company shall not be liable for a breach of the warranty in Condition 9.2 unless:
- (a) the Customer gives written notice of the defect to the Company (and also to the carrier if the defect is a result of damage in transit), within 3 days of the time when the Customer discovers or ought to have discovered the defect; and
  - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 9.4 The Company shall not be liable for a breach of the warranty in Condition 9.2 if:
- (a) the Customer makes any further use of such Goods after giving such notice; or
  - (b) the defect arises because the Customer failed to follow any 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
  - (c) the defect arises from any Input Material and/or specification supplied by the Customer or, without limitation, from any change made by the Customer to any Input Material and/or specification supplied by the Customer (and in each case notwithstanding that the Company may have issued an ECN), or from fair wear and tear, willful damage, negligence, abnormal working conditions or from any abnormal use or misuse, or repair or attempted repair, of the Goods; or
  - (d) such parts are rendered defective as the result of fair wear and tear, willful damage, negligence carelessness or abuse of whatsoever kind in work, accident or use of the Goods beyond their designed capabilities;
  - (e) the faults occurred after a mounting or defective setting of the Goods not carried out by the Company's employees or agents;
  - (f) the defective part has been repaired replaced or modified other than by the Company's employee or nominee;

- (g) the Customer makes further use of such Goods after giving notice in accordance with clause 9.3;
- (h) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
- (i) notice of the fault was not, on its initial discovery, immediately given to the Company;
- (j) the full price for the Goods has not been paid by the time for payment stipulated in Condition 8.1; or
- (k) the defect is of a type specifically excluded by the Company by notice in writing.

9.5 Subject to Condition 9.3 and Condition 9.4, if any of the Goods do not conform with the warranty in Condition 9.2 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. The Company shall, if it opts to replace the defective Goods, then deliver replacement Goods to the Customer at the Delivery Point (at the Company's expense), and ownership of the defective Goods shall, if it has vested in the Customer, re-vest in the Company.

9.6 If the Company complies with Condition 9.5 it shall have no further liability for a breach of the warranty in Condition 9.2 in respect of such Goods.

9.7 The warranties contained in this Clause 9 shall not extend to parts supplied to the Company by the Customer.

## **10. LIMITATION OF LIABILITY**

10.1 Subject to these Conditions the following provisions set out the entire financial 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:

- (a) any breach of these Conditions;
- (b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 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) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) (for fraud or fraudulent misrepresentation; or
- (d) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability;

10.4 Subject to Condition 10.2 and Condition 10.3:

- (a) 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
- (b) the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10.5 Subject to clause 10.3 the Company's total liability in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall in no circumstance exceed the total amount paid for the Goods and/or Services (as applicable).

10.6 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.7 This clause 10 shall survive termination of the Contract.



## **11. INDEMNITY**

The Customer shall hold the Company harmless and keep the Company indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Customer's possession, ownership or use of any Goods.

## **12. SERVICES**

- 12.1 With respect to any Services that the Company is to perform for the Customer, the provisions of this Condition 12 shall apply.
- 12.2 The Company shall perform the Services with reasonable skill and care. Save that the Company does not exclude its liability to the Customer for any breach of the Company's obligations under section 2 of the Supply of Goods and Services Act 1982, the Company hereby excludes, to the fullest extent permitted by law, any and all warranties and representations, express and implied, with respect to the Services and the Company's total liability to the Customer with respect to the Services shall be limited to re-performing any Services which are proved to the reasonable satisfaction of the Company not to have been performed with reasonable skill and care, or at the Company's option, refunding any monies already paid by the Customer for any such Services. For the avoidance of doubt, and without prejudice to Condition 12.1, the provisions of Condition 10 (and in particular, Condition 10.4), shall expressly apply to the performance of any Services by the Company.
- 12.4 The Company will use its reasonable endeavours to confirm a date and time most suitable to the Customer in order to perform the required Services, although the Company shall be under no obligation to meet the Customer's specific requirements in this regard.
- 12.5 Time for the performance of any Services shall not be of the essence.
- 12.6 The Customer shall be responsible for delivering any Test Product to the Company's premises, unless otherwise agreed in advance with the Company and the Customer shall, unless otherwise so agreed, also pay any and all costs associated therewith. Any Test Product shall be handled by the Company at the Customer's own risk and, without limitation, the Company shall not be liable to the Customer for any damage to any Test Product which occurs during any Test Procedure.
- 12.7 The Customer shall be solely responsible for any design, development and trial costs with respect to any test rig developed for the Customer for use in any Test Procedure. Without limitation, the Customer shall also be solely responsible for the cost of any test rig which the Company may, in the Company's sole discretion, deem to be required for use in any Test Procedure.
- 12.8 Where a Test Product consists of a sample of certain goods, Attainment with respect to that sample shall not imply Attainment with respect to any other quantity of those goods.
- 12.9 The Customer acknowledges and agrees that Attainment shall not be conclusive evidence of the integrity of any Test Product and that the Company shall have no liability for any Test Product which proves to be unsafe or unreliable, or otherwise not in conformity with any standards other than the Prescribed Standards.

## **13. ASSIGNMENT/SUBCONTRACTING**

- 13.1 The Company may assign the Contract or any part of it to any person, firm or company without the Customer's consent.
- 13.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 13.3 The Company, but not the Customer, shall be entitled to subcontract any or all of its obligations under all or any part of the Contract.

## **14. FORCE MAJEURE**

The Company reserves the right to defer the date of delivery and/or performance, or to cancel the Contract or reduce the volume of the Goods and/or Services ordered by the Customer (without liability to the Company) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

## **15. GENERAL**

- 15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 15.2 The Customer and the Company agree that in the course of the Company providing Goods and/or Services to the Customer, the parties may disclose to each other certain
- 15.3 The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party.
- 15.4 The Customer acknowledges the Company's ownership of any Intellectual Property Rights in any Goods and/or Services provided to the Customer pursuant to the Contract and agrees not to contest the Company's ownership of any such Intellectual Property Rights. Without limitation, the Customer shall not acquire, nor shall the Customer register or attempt or permit to be registered, any such Intellectual Property Rights. The Customer further acknowledges that any and all Intellectual Property Rights developed by the Company in performing any Services or producing any Goods shall become vested and shall vest in the Company absolutely.
- 15.5 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 15.6 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 15.7 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.8 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 15.9 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

## **NOTICES**

- 16.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent electronically via email
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
- (b) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a Company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 16.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day; or
- (d) if sent by email, within one hour of sending.
- 16.3 Communications addressed to the Company shall be marked for the attention of Customer Services.