

FENDERCARE TERMS AND CONDITIONS FOR SALE AND SUPPLY

Unless otherwise agreed in writing by an authorized representative of one of the Fender Care Contracting Companies, these Terms and Conditions apply to all Quotations, Order Acknowledgments and Contracts for Sale, or Provision of Services provided by or entered into by and including Fender Care Marine Ltd and or any subsidiary thereof and or any subsidiary of but excluding Fender Care Marine Solutions Limited (“Fender Care Contracting Companies”).

Attention is drawn in particular to clauses 9, 13 and 14, which exclude or restrict the Supplier’s liability or contain indemnities in the Supplier’s favour in certain circumstances.

1. Interpretation

1.1. In these Conditions, unless the context otherwise requires:

‘**CLAIMS**’ includes all actions, causes of action, claims, demands, proceedings, damages, awards, payments, debts, losses, costs, expenses (including legal or professional expenses), penalties, fines, compensation or other liabilities (whether direct, indirect, consequential or otherwise including loss of profit, business, turnover or market share and interest thereon).

‘**CLIENT**’ means the person named in the Purchase Order to whom the Supplier may agree to provide Goods and/or Services in accordance with these Conditions

‘**CLIENT GROUP**’ means the Client, its subcontractors and suppliers of any tier, and its and their employees, directors, representatives, agents, servants and invitees and any person employed, hired or engaged by any of them.

‘**CLIENT’S EQUIPMENT**’ means the materials, instruments, equipment, access to utilities and/or services to be provided to the Supplier by the Client in order to facilitate the provision of the Service as agreed and set out in the Specification

‘**CONDITIONS**’ means the standard terms and conditions of sale and supply set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Client and the Supplier

‘**CONTRACT**’ means the contract for the provision of a particular Service(s) and/or the contract for the purchase and sale of the Goods as the case may be in each case governed by these Conditions

‘**DOCUMENT**’ includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape, disc or other device embodying visual images and any disc, tape or other device embodying any other data

‘**GOODS**’ means the goods (including any instalment of the goods or any parts for them) which the Supplier is to supply in accordance with these Conditions and set out in the Specification

‘**INPUT MATERIAL**’ means any Documents or other materials, and any data or other information provided by the Client relating to the Service

‘**IPR**’ means any patent, copyright, design, trade mark or other industrial or intellectual property rights

‘**OUTPUT MATERIAL**’ means any Documents or other materials, and any data or other information produced by the Supplier in performance of the Service

‘**Party**’ means each of the Supplier and the Client and “Parties” shall be construed accordingly.

‘**PRICE**’ means the price of the Goods which shall be the Supplier’s quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in the Supplier’s published price list current at the date of acceptance of the Purchase Order.

‘**PURCHASE ORDER**’ means the instrument by which the Client requests the provision of Goods and/or Services

‘**SITE**’ means the location at which the Service is to be provided as set out in the Specification.

‘**SPECIFICATION**’ means the details of the Service and/or the Goods to be supplied as set out in the Client’s Purchase Order (if accepted by the Supplier) or otherwise in the Supplier’s quotation or order acknowledgment (in any form)

‘**SERVICE**’ means the service or services to be provided by the Supplier to the Client in accordance with these Conditions and referred to in the Specification

‘**SUPPLIER**’ means the entity which accepts the Client’s Purchase Order

‘**SUPPLIER GROUP**’ means any one, more or all of the Supplier, its subcontractors and suppliers of any tier and its and

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their employees, directors, representatives, agents, servants, invitees and any person employed, hired or engaged by any of them

'STANDARD CHARGES' means the Supplier's charges relating to the Service

'WRITING' means any form of written communication including transmission by facsimile. It shall also include electronic mail ("Email") where the Parties have agreed either expressly or by a course of dealing to communicate by Email and have provided each other with correct Email addresses accordingly, save that any Email shall take effect only when received by the recipient.

- 1.2. The headings in the Conditions in 1.1 above are for convenience only and shall not affect their interpretation.
- 1.3. Any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision.
- 1.4. Any reference in these Conditions to any statute or statutory provision shall be construed as a reference to that statute or statutory provision as amended, re-enacted or extended at the relevant time.
- 1.5. Any reference in these Conditions unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular
- 1.6. All business conducted by the Supplier with the Client, including all Contracts, quotations, pre-contractual negotiations and all Purchase Orders, shall be subject to these Terms and Conditions to the exclusion of any and all other terms and conditions, including any standard or general terms and conditions of purchase, sale, or for services confirmed, referred to in, enclosed or otherwise annexed to any Purchase Order, acknowledgement or other communication from the Client, except where the Supplier has notified the Client of an additional term to be incorporated or where the Parties have expressly identified or incorporated mutually agreed special conditions into a Purchase Order to modify, supplement or amend these Terms and Conditions ("Special Conditions"). Such Special Conditions shall apply equally with these Terms and Conditions but in the event of a conflict or any ambiguity between these Terms and Conditions and the Special Conditions, the Special Conditions shall prevail.
- 1.7. No Contract shall be formed until the Supplier confirms in Writing its acceptance of the Purchase Order from the Client. The Supplier does not offer or give any guarantee of acceptance of any Purchase Order. Acceptance of each Purchase Order is at the Supplier's discretion and is subject to availability of the relevant Goods and/or Services

PROVISIONS APPLICABLE TO THE SERVICE

2. Supply of the Service

- 2.1 The Supplier shall provide the Service to the Client in accordance with these Conditions. Any changes or additions to the Service must be agreed in writing by the Supplier and the Client.
- 2.2 The Client shall at its own expense supply the Supplier with all necessary Documents or other materials, and all necessary data or other information relating to the Service, within sufficient time to enable the Supplier to provide the Service in accordance with the Contract. The Client shall ensure the accuracy of all Input Material.
- 2.3 The Client shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Supplier shall have no liability for any such Claims however caused. All Output Material shall be at the sole risk of the Client from the time of delivery to or to the order of the Client.
- 2.4 The Service shall be provided in accordance with the Specification and otherwise in accordance with the Supplier's current brochure or other published literature relating to the Service from time to time, subject to these Conditions.
- 2.5 Further details about the Service, and advice or recommendations about its provision or utilisation, which are not given in the Supplier's brochure or other promotional literature, may be made available on written request.
- 2.6 The Supplier may correct any typographical or other errors or omissions in any brochure, promotional literature, quotation or other document relating to the provision of the Service without any liability to the Client.
- 2.7 The Supplier may at any time without notifying the Client make any changes to the Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Service.

3. Obligations of the Client

- 3.1 The Client shall comply in all respects with all applicable laws and regulations (whether of the United Kingdom or elsewhere) at the Site. Without prejudice to the generality of the foregoing, the Client shall provide a safe environment in which the Supplier's personnel may provide the Service and shall establish procedures under, and comply with, all requirements from time to time in force under the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1992 and the Workplaces (Health, Safety and Welfare) Regulations 1992 or any other applicable health and safety laws.

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- 3.2 The Client shall afford the Supplier's personnel such access to the Site as may be required to provide the Service. Further, the Client shall:
 - 3.2.1 advise the Supplier and its personnel of any rules and regulations which are then in force at the Site (including without limitation, any Site operating code or policies from time to time in force);
 - 3.2.2 make available such working space and facilities at the Site as the Supplier's personnel may reasonably require;
 - 3.2.3 make available appropriate personnel to liaise with the Supplier's personnel; and
 - 3.2.4 secure and otherwise keep safe all and any property of the Supplier.
 - 3.3 The Client shall provide the Client's Equipment free of charge at such times and locations as may be reasonably requested by the Supplier or its personnel.
 - 3.4 To the extent that the Specification records the Supplier's requirement to supply a vessel to facilitate any part or all of the Service(s), Client hereby agrees and acknowledges that Supplier shall provide any such vessel to perform the Service(s) under the Contract on terms no less onerous than those contained in any vessel charter document or terms offered to Supplier by vessel owner, which shall be deemed to apply to and form part of this Contract, save that reference to the vessel "Owner" (or equivalent) shall be deemed to mean the Supplier and reference to the "Charterer" (or equivalent) shall be deemed to mean the Client.
 - 3.5 The Client shall comply with all applicable laws, statutes, regulations and codes in force from time to time in relation to the Contract, including those relating to data and privacy and the ownership and use of the Goods including health and safety requirements.
- 4. Rights in Input Material and Output Material**
- 4.1 The title and any copyright or other intellectual property rights in:
 - 4.1.1 any Input Material shall belong to the Client
 - 4.1.2 any Output Material shall, unless otherwise agreed in writing between the Client and the Supplier, belong to the Supplier, subject only to the right of the Client to use the Output Material for the purposes of utilising the Service.
 - 4.2 Any Input Material or other information provided by the Client which is so designated by the Client and any Output Material shall be kept confidential by the Supplier, and all Output Material or other information provided by the Supplier which is so designated by the Supplier shall be kept confidential by the Client; in accordance with clause 17.13.
 - 4.3 The Client warrants that any Input Material and its use by the Supplier for the purpose of providing the Service will not infringe the copyright or other rights including intellectual property rights of any third party, and the Client shall indemnify the Supplier against any Claims arising from any such infringement.
 - 4.4 Subject to paragraph 4.3, the Supplier warrants that any Output Material and its use by the Client for the purposes of utilising the Service will not infringe including intellectual property rights of any third party, and the Supplier shall indemnify the Client against any claims arising from any such infringement.

PROVISIONS APPLICABLE TO THE GOODS

- 5. Basis of the sale**
- 5.1 The Supplier shall sell and the Client shall purchase the Goods in accordance with any written quotation or order acknowledgement of the Supplier which is accepted by the Client, or any Purchase Order of the Client which is accepted by the Supplier, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation or order acknowledgement is accepted or purported to be accepted, or any such Purchase Order is made or purported to be made, by the Client.
 - 5.2 The Supplier Group are not authorised to make any representations concerning the Goods or Services unless confirmed by the Supplier in Writing. In entering into the Contract the Client acknowledges that it does not rely on any such representations which are not so confirmed.
 - 5.3 Any advice or recommendation given by the Supplier Group to the Client Group as to the storage, application or use of the Goods which is not confirmed in Writing by the Supplier is followed or acted upon entirely at the Client's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
 - 5.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier relating to the Goods shall be subject to correction without any liability on the part of the Supplier.
 - 5.5 The Client shall contact Supplier for suitable storage and maintenance instructions if Goods remain in, or are expected to remain in storage for a period exceeding four (4) weeks from delivery date pursuant to Section 7 below.
 - 5.6 If Client fails to request storage instructions from Supplier within seven (7) days of the end of this four (4) week period and the Goods have yet to be commissioned regardless of reason; or fails to follow the Supplier's instructions wholly or in part for the Goods in storage or installed and for the period prior to commissioning, then the warranty (described in Section 13 below) shall immediately become void.
 - 5.7 In the event Client requires Supplier to visit site on matters relating to storage or maintenance of the Goods, Supplier shall provide authorised personnel at its published day rates.

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6. Orders and specifications

- 6.1 No Purchase Order for Goods submitted by the Client shall be deemed to be accepted by the Supplier unless and until confirmed in Writing by the Supplier's authorised representative, who shall be at a level of no less than a Director or senior manager unless otherwise agreed in writing in advance by a Director. .
- 6.2 The Client shall be responsible to the Supplier for ensuring the accuracy of the terms of any Purchase Order (including any applicable Specification) submitted by the Client, and for giving the Supplier any necessary information relating to the Goods within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.
- 6.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Specification.
- 6.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Supplier in accordance with a Specification submitted by the Client, the Client shall indemnify the Supplier against all Claims against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim arising out of:-
 - (i) infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Supplier's use of the Client's specification; or
 - (ii) any impracticality, inefficiency or lack of safety or other defect in the Goods where such defect is due (whether in whole or in part) to faults or omissions in information, drawings, designs, instructions, or specifications of the Client.
- 6.5 The Supplier reserves the right to make any changes in the Specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Supplier's Specification, which do not materially affect quality or performance of the Goods.
- 6.6 The Supplier shall have no liability in the case where parts or components to be supplied by its sub-suppliers become unavailable.
- 6.7 No Purchase Order which has been accepted by the Supplier may be terminated by the Client subject to clause 15.3.

7. Delivery

- 7.1 Delivery of the Goods shall be made by the Client collecting the Goods at the Supplier's premises at any time after the Supplier has notified the Client that the Goods are ready for collection or, if some other place for delivery is agreed in Writing by the Supplier, by the Supplier delivering the Goods to that place. Where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Supplier shall be under no obligation under Section 32(2) of the Sale of Goods Act 1979.
- 7.2 Any dates quoted for delivery of the Goods are approximate only in accordance with clause 14.5.
- 7.3 Time for delivery shall not be of the essence of the Contract unless previously agreed by the Supplier in Writing. The Goods may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Client.
- 7.4 Unless otherwise agreed, the Client will take delivery of the Goods within seven (7) days from receipt of notice in Writing from the Supplier to do so. If the Client fails to take delivery of the Goods within seven days (or any other period agreed pursuant to this clause) from receipt of notice in Writing from the Supplier or fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Client's reasonable control) then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:
 - (i) issue its invoice in respect of the Goods as if they had been delivered;
 - (ii) store the Goods until actual delivery is made and charge the Client for the costs (including insurance) of storage;
 - (iii) sell, supply or hire the Goods to a third party in any country at the best price obtainable;
 - (iv) suspend other deliveries of Goods
- 7.5 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Client in respect of any one or more instalments shall not entitle the Client to treat the Contract as a whole as repudiated.
- 7.6 If the Supplier fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Supplier's reasonable control or the Client's fault, and the Supplier is accordingly liable to the Client, the Supplier's liability shall be limited to the excess (if any) of the cost to the Client (in the cheapest available market) of similar goods to replace those not delivered over the Price of the Goods.
- 7.7 Save for return of Goods pursuant to Section 13 (Warranties and Liabilities) Goods shall not be returned to Supplier unless in the case of Supplier's standard Goods which Supplier has approved the return of in advance. All approved returns must be packaged to prevent damage, insured and returned prepaid. Returned Goods shall be subject to a 25% restocking charge.

8. Risk and title

- 8.1 Risk of damage to or loss of the Goods shall pass to the Client:
 - 8.1.1 in the case of Goods to be delivered at the Supplier's premises, at the time when the Supplier notifies the Client that the Goods are

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available for collection; or

8.1.2 in the case of Goods to be delivered otherwise than at the Supplier's premises, at the time of delivery or, if the Client wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title in the Goods shall not pass to the Client until the Supplier has received in cash or cleared funds payment in full of the Price of the Goods and the Standard Charges for the Service to be provided under the Contract and all other goods agreed to be sold and services agreed to be provided by the Supplier to the Client for which payment is then due.

8.3 Until such time as the title in the Goods passes to the Client, the Client shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Client and third parties and properly stored, protected and insured and identified as the Supplier's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

8.4 Until such time as the title in the Goods passes to the Client (and provided the Goods are still in existence and have not been resold), the Supplier shall be entitled at any time to require the Client to deliver up the Goods to the Supplier and, if the Client fails to do so forthwith, to enter upon any premises of the Client or any third party where the Goods are stored and repossess the Goods.

8.5 The Client shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Client does so all monies owing by the Client to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

8.6 The Client hereby agrees to and grants the Supplier a continuing security interest in any and all such Goods together with all accessions, attachments, substitutions and amalgamations thereto, and any proceeds or products derived from the sale thereof. Without prejudice to any other rights and remedies available to the Supplier under the Contract or in law, in the event of any breach of Contract by the Client, the Supplier shall have the full right and entitlement without further notice to the Client to take possession of all or any part of the Goods and to sell the same in a commercial manner in accordance with applicable law and to apply the proceeds of such sale against any Claims suffered by the Supplier. The Client hereby agrees to do all that is necessary by law to give effect to such security.

9. IPR

9.1 If any claim is made against the Client that the Goods infringe or that their use or resale infringes the IPR of any other person, then unless the claim arises from the use of any information, drawing, design, instruction or Specification supplied by the Client, the Supplier shall indemnify the Client against all claims against or incurred by the Client in connection with the Claim, or paid or agreed to be paid by the Client in settlement of the Claim, provided that:

9.1.1 the Supplier is given full control of any proceedings or negotiations in connection with any such claim;

9.1.2 the Client shall give the Supplier all reasonable assistance for the purposes of any such proceedings or negotiations;

9.1.3 except pursuant to a final award, the Client shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Supplier (which shall not be unreasonably withheld);

9.1.4 the Client shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Client may have in relation to such infringement, and this indemnity shall not apply to the extent that the Client recovers any sums under any such policy or cover (which the Client shall use its best endeavors to do);

9.1.5 the Supplier shall be entitled to the benefit of, and the Client shall accordingly account to the Supplier for, all damages and costs (if any) awarded in favour of the Client which are payable by, or agreed with the consent of the Client (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and

9.1.6 without prejudice to any duty of the Client at common law, the Supplier shall be entitled to require the Client to take such steps as the Supplier may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Supplier is liable to indemnify the Client under this clause.

10. Export terms

10.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

10.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Client and the Supplier) apply notwithstanding any other provision of these Conditions, subject to clause 12.1.4.

10.3 The Client shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

10.4 Unless otherwise agreed in Writing between the Client and the Supplier, the Goods shall be delivered FCA and the Supplier shall be under no

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obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

- 10.5 The Client shall be responsible for arranging for testing and inspection of the Goods at the Supplier's premises before shipment. The Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit including for the avoidance of doubt for any damage caused or suffered during unloading of Goods where (without limit the lifting strops may have become damaged and fail..
- 10.6 Unless otherwise agreed by the Supplier in writing, payment of all amounts due to the Supplier shall be made by irrevocable letter of credit opened by the Client in favour of the Supplier and confirmed by a bank acceptable to the Supplier or, if the Supplier has agreed in Writing on or before acceptance of the Client's Purchase Order to waive this requirement, by acceptance by the Client and delivery to the Supplier of a bill of exchange drawn on the Client payable at sight to the order of the Supplier at such branch of the Supplier's nominated bank in England as may be specified in the bill of exchange.

PROVISIONS APPLICABLE TO THE SPECIFIED SERVICE AND THE GOODS

11. Price

- 11.1 Unless otherwise agreed between the Parties in Writing the Client shall pay the aggregate of:
- (i) the Standard Charges and any additional sums which are agreed between the Supplier and the Client for the provision of the Service or which, in the Supplier's sole discretion are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Client; and
 - (ii) the Price of the Goods plus any additional sums which are agreed between the Supplier and the Client for the provision of the Goods including, but not limited to, transport, duties and certification.
- The Standard Charges and Prices are valid for 30 days only (or until earlier acceptance by the Client or earlier withdrawal by the Supplier before the Client's acceptance), after which time they may be altered by the Supplier without giving notice to the Client.
- 11.2 The Supplier reserves the right, by giving notice to the Client at any time before delivery, to increase the price of any Goods supplied under this Contract to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give the Supplier adequate information or instructions.
- 11.3 Except as otherwise stated under the terms of any quotation or in any price list of the Supplier, and unless otherwise agreed in Writing between the Client and the Supplier, all Prices for Goods are given by the Supplier on an ex works basis, and where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Client shall be liable to pay the Supplier's charges for transport, packaging and insurance.
- 11.4 All charges quoted to the Client for the provision of the Service and the price of the Goods are exclusive of any costs, charges or applicable taxes (including but not limited to value added tax, local taxes or any withholding taxes) for which the Client shall be additionally liable to pay the Supplier at the applicable rate from time to time.
- 11.5 Unless otherwise agreed in writing by the Supplier payment of the Price shall be in Sterling. The time of payment shall be of the essence of the Contract. Receipts for payment will be issued only upon request

12. Terms of payment

- 12.1.1 Subject to the circumstances in clause 12.1.4, and or clause 12.1.2, the Supplier shall be entitled to invoice the Client for the Price of the Services on commencement of the specified Service and or for the Price of the Goods on or at any time after dispatch of the Goods, unless the Goods are to be collected by the Client or the Client wrongfully fails to take delivery of the Goods, in which event the Supplier shall be entitled to invoice the Client for the Price at any time after the Supplier has notified the Client that the Goods are ready for collection or (as the case may be) the Supplier has tendered delivery of the Goods. Storage charges shall accrue monthly after two (2) weeks if not collected.
- 12.1.2 Provided that a credit arrangement has been approved by the Supplier, subject to clause 12.1.4 the Client shall pay the Price of the Goods (together with any applicable Value Added Tax and less any discount to which the Buyer is entitled but without any set-off, counterclaim or any other deduction) within 30 days of the date of the Supplier's invoice, and the Supplier shall be entitled to recover the Price, notwithstanding that delivery may not have taken place and the title in the Goods has not passed to the Client.
- 12.1.3 Where no credit arrangement has been approved by the Supplier prior to dispatch of the Goods or commencement of the specified Services the client may be required to make a proforma payment to the Supplier in the amount, form and currency specified by the Supplier.
- 12.1.4 Where the Services are to be provided, or the Goods are to be exported outside the United Kingdom in accordance with clause 10 above, unless the Supplier has agreed otherwise, the Supplier may invoice and the Client will be required to make full payment of the

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Price in advance of delivery or commencement of the Services.

- 12.2 If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
- 12.2.1 cancel the Contract or suspend any further deliveries of the Goods or performance of the Service to the Client;
 - 12.2.2 the immediate payment of all payments outstanding in respect of the Goods and Service and of any other goods, works or services under any other contract notwithstanding the fact that the date for payment may not yet have fallen due;
 - 12.2.3 appropriate any payment made by the Client to such of the Goods or Service (or the goods or services supplied under any other contract between the Client and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Client);
 - 12.2.4 charge the Client interest (both before and after any judgment) on the amount unpaid, at the rate of 2 per cent per annum above the base bank rate of HSBC Bank PLC, or 8 per cent per annum whichever is higher, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest);
 - 12.2.5 charge the Client the cost of recovery of any unpaid amount including any legal costs, disbursements and bank charges incurred; and
 - 12.2.6 Nothing in this clause shall prevent the Supplier from alternatively electing to charge interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998

13. Warranties

- 13.1 Subject to the conditions set out below the Supplier warrants that the Goods will correspond with their Specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire.
- 13.2 The above warranty is given by the Supplier subject to the following conditions:
- 13.2.1 Where the Goods fail due to faulty materials or workmanship (and the Goods remain within the warranty period specified in Clause 13.1. above), the Client shall (at the Client's expense) return the Goods to the Supplier's address as set out in the dispatch documentation. The Supplier shall inspect the Goods and acceptance of liability to replace or repair (the decision to replace or repair being at the Supplier's sole discretion) the Goods shall be subject to the Supplier discovering fault. If the Client requires on site repairs, the Client shall be responsible for all costs and expenses incurred by the Supplier (including subsistence expenses, travel expenses and travel time costs (travel time costs to be charged at the Supplier's standard rate), except where the Goods have been commissioned by one of the Supplier's engineers in which case labour costs whilst carrying out the actual repair/inspection on site will not be charged;
 - 13.2.2 The Supplier shall not be liable under the warranty in clause 13.1. above to carry out any repairs or to replace Goods where the Goods have suffered damage as a result of repairs carried out or modifications made to the Goods by the Client or any other third party;
 - 13.2.3 The Supplier shall be under no liability in respect of any defect in the Goods arising from any information, drawing, design, instruction or Specification supplied by the Client;
 - 13.2.4 The Supplier shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in Writing), improper installation (other than by the Supplier) misuse or alteration or repair of the Goods without the Supplier's approval;
 - 13.2.5 The Supplier shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total Price for the Goods has not been paid by the due date for payment or if the Client is otherwise in breach of this Contract or any other contract with the Supplier;
 - 13.2.6 The above warranty does not extend to parts, materials or equipment (including Output Material) not manufactured by the Supplier, in respect of which the Client shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier.
- 13.3 The Supplier warrants to the Client that the Service will be provided using reasonable care and skill by suitably qualified personnel and, as far as reasonably possible, in accordance with the Specification and at the intervals and within the times referred to in the Specification .
- 13.4 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 13.5 Where the Goods are sold to a Consumer (as defined by the Consumer Rights Act 2015) the statutory rights of the Client are not affected by these Conditions.
- 13.6 The Supplier shall have no liability to the Client for any Claims for compensation arising from any Input Material or instructions supplied by the

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Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.

- 13.7 Subject to clauses 13.1, 13.2 and 13.3 unless otherwise expressly agreed by the Supplier and set out in Writing in the Contract, no warranties or representations are given or made by or on behalf of the Supplier as to the performance, availability, durability, use, storage, effectiveness, quality, suitability or fitness for any purpose of any Goods sold or supplied hereunder, or for any Service provided hereunder, and any conditions or warranties implied or imposed by operation of law are hereby excluded.
- 13.8 Each Party agrees that it shall have no remedies in respect of any misrepresentation (other than one made fraudulently) or warranty (whether made innocently or negligently) that is not expressly set out in the Contract. No Party shall have any claim for innocent or negligent misrepresentation based upon any statement in the Contract.

14. Limitation of Liability and Indemnity

- 14.1 Notwithstanding any provision(s) elsewhere in the Contract, except for any clause in the Contract which excludes the Supplier's liability under Contract, including without limit clause 14.2, and excluding any clause which limits the Supplier's liability to a sum less than the Supplier's Liability Limit, the Supplier's total aggregate liability arising under or in connection with the Contract including liability for all Claims, and causes of action of any kind and description howsoever and whatsoever arising including arising from breach of contract, warranty, guarantee, indemnity, tort (including without limit negligence or breach of statutory duty), strict liability or otherwise at law shall not in the aggregate exceed 100% of the amount specified in the Contract or if no amount is specified shall not exceed the Price or the Standard Charges for which the Claim arises ("Supplier's Liability Limit"). The Client shall be responsible for and defend, indemnify and hold harmless the Supplier Group for all and any Claim(s) (whether directly or by way of compensating others) over and above the Supplier's Liability Limit regardless of whether it is claimed that the Supplier Group are passively, concurrently or actively negligent or at fault and regardless of whether or not liability may or may not be imposed upon them without fault.
- 14.2 Notwithstanding any provision(s) elsewhere in the Contract, the Supplier and its subcontractor and suppliers shall not in any event be liable to the Client however and whatsoever arising whether as a result of breach of contract, warranty, guarantee, indemnity, tort (including without limit negligence or breach of statutory duty), strict liability or otherwise at law for any:
- (i) third party claims for financial loss or expense;
 - (ii) loss of profits or anticipated profits;
 - (iii) account of profit;
 - (iv) loss of bargain;
 - (v) loss of revenue;
 - (vi) reduction in turnover;
 - (vii) loss of use of the Product or equipment;
 - (viii) business interruption or downtime costs;
 - (ix) loss of contract or business opportunity;
 - claims of customers or other contractors of Client; or
 - (x) whether or not included in (i) to (ix) above, any indirect, special, incidental or consequential loss or damage ("Indirect"), whether or not such Indirect losses were foreseen at the effective date of the Contract.
- 14.3 Unless otherwise agreed in Writing and subject to clause 14.4, the Client shall fully indemnify and hold the Supplier Group harmless against any Claim howsoever caused (including by negligence) to the Client Group and/or property of the Client Group arising out of or related to of the Contract.
- 14.4 Nothing in these Conditions excludes or limits the Supplier's liability for:
- (i) death or personal injury caused by the Supplier's negligence;
 - (ii) fraud or fraudulent misrepresentation; or
 - (iii) willful default or deliberate breach of contract.
 - (iv) any other Claims that the Supplier may not lawfully exclude or limit at law from time to time
- 14.5 Where the Supplier agrees to sell Goods to the Client, the Supplier will not be liable for any Claims caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the negligence of the Supplier Group), nor will any delay entitle the Client to terminate or rescind the Contract unless such delay is attributable solely to the breach by the Supplier and exceeds thirty (30) days and provided that prior to any such termination or rescission the Client has given the Supplier not less than 30 days prior Written notice requiring the Supplier to complete its delivery obligations. Provided always that the Client agrees that its right to terminate or rescind the Contract is subject to full payment of the Price up to and including the termination.
- 14.6 Where the Supplier agrees to provide a Service to the Client, the Supplier will not be liable for any Losses caused directly or indirectly by any delay in the provision of the Service (even if caused by the negligence of the Supplier Group). Subject to clause 15.3 below, unless otherwise expressly agreed, the Client shall not be entitled to terminate the Contract solely because of such delay.

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15 Termination

- 15.1 The Supplier shall be entitled to terminate the Contract forthwith by notice in Writing to the Client if:
- (i) the Client commits an irremediable breach of the Contract (including breach of clauses 3, 18 and 19) persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within seven (7) days of receipt of notice in Writing of the breach requiring remedy of the same; or
 - (ii) the Client makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a Supplier) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or
 - (iii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Client; or
 - (iv) the Client ceases or threatens to cease to carry on business; or
 - (v) where the Client is resident in a jurisdiction other than England and Wales, an event similar to any of those specified in clauses 15.1 (ii) and 15.1 (iii) occurs to or in relation to the Client.
- 15.2 In the event of termination by the Supplier pursuant to clause 15.1 above then, without prejudice to any other right or remedy available to the Client, the Supplier shall be entitled to cancel the Contract or suspend any further deliveries or Services due under it without any liability to the Client and, if the Services have already been provided, Goods delivered but not paid for, the price of the Services or Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Supplier shall be entitled to charge interest in accordance with clause 12.2.4 and/or 12.2.6.
- 15.3 The Client may request the agreement of the Supplier to the termination of the Contract by giving to the Supplier thirty (30) days prior notice in Writing of its request to terminate. In the event of the Supplier agreeing to such request, the Supplier shall invoice the Client and the Client shall immediately pay to the Supplier the full Price and the Client shall indemnify the Supplier in full against all costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier up to the date of termination together with any additional costs and/or charges payable by the Client under clauses 11 and 12
- 15.4 Consequences of termination
- (i) Any provision of the Contract and or the Terms and Conditions that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect, including but not limited to clauses 4, 7, 12, 14, 17.5 and 17.13 of the terms and Conditions
 - (ii) Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Terms and Conditions and or the Contract which existed at or before the date of termination.

16. Force Majeure

- 16.1 The Supplier shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations if the delay or failure was due to any cause beyond the Supplier's reasonable control including (without limitation):
- (i) act of God, storm, flood, tempest or other weather conditions, explosion, fire or accident;
 - (ii) war or threat of war, civil war, hostilities, sabotage, insurrection, terrorist attack, riot or civil disturbance, or requisition;
 - (iii) epidemic or pandemic;
 - (iv) Governmental or local authority acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind;
 - (v) import or export regulations, sanctions or embargoes;
 - (vi) strikes, lock-outs or other industrial actions or trade disputes whether involving employees of the Supplier Group or of a third party;
 - (vii) difficulties in obtaining raw materials, labour, fuel, parts, equipment, machinery or other essential supplies; or
 - (viii) failure or breakdown in equipment or machinery from power failure or other external causes

The Supplier may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Supplier.

17. General Terms

- 17.1 Any notice required or permitted to be given by either Party to the other under these Conditions shall be in Writing addressed to that other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice. For the purpose of service and shall be deemed to have been served in the case of a notice delivered by hand, when delivered, or in the case of a letter, forty-eight (48) hours after the time of posting

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- 17.2. No waiver by the Supplier of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 17.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 17.4. This Contract including all disputes (whether contractual or non-contractual and including interpretation) shall be subject to English law. Any contractual and non-contractual disputes arising out of or in connection with this Contract including the interpretation thereof shall be resolved initially by informal negotiations between the Directors of the parties in dispute. Failing resolution by such informal negotiations within a period of 60 days from the date that either Party initially gives notice of dispute to the other Party, the dispute shall:
- (a) be resolved by arbitration in London under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The language to be used in the arbitration shall be English. The award of the arbitrator shall be final and without appeal to the courts save that either Party may enforce such award through the courts; or
 - (b) where the Client is located in a Country that is not a signatory to an international treaty (such as the New York Convention) which allows a foreign arbitral award to be enforced in the Client's local courts, the Client hereby agrees that the Supplier shall have the right to bring any claims, disputes, legal actions, suits or proceedings it may have against the Client in the courts of any jurisdiction where the Client or any of its property or assets may be found or located, and the Client hereby irrevocably submits to the jurisdiction of any such court.
- 17.5. Should changes in applicable laws, rules and regulations, including any change in interpretation thereof by the courts or a legally constituted governmental or regulatory body or similar authority, made after the effective date of commencement of the Contract, result in an increase in the cost to the Supplier and/or a delay in the Supplier's time for performance of the Contract, the Price and/or the schedule for performance, as the case may be, shall be adjusted to the extent necessary to provide the Schedule with relief from such increase in cost and/or delay
- 17.6. Except as expressly provided in these Conditions, a person who is not a party to the Contract shall not have any rights (whether under the Contracts (Rights of Third Parties) Act 1999 where applicable, or otherwise) to enforce any term of these Conditions.
- 17.7. The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, arrangements, agreements, promises, assurances, warranties, statements, representations, references and understandings between them, whether written or oral, relating to its subject matter.
- 17.8. No variation to these Conditions shall be binding unless agreed in Writing or by e-mail between an officer or director of the Supplier and an authorised representative of the Client.
- 17.9. The Contract or any right or obligation hereunder may not be assigned, novated, transferred, subcontracted or otherwise disposed of or divested by the Client without the prior written consent of the Supplier.
- 17.10. The Client hereby waives any right to set-off under the Contract or otherwise and agrees to pay all sums due regardless of any equity, set-off or cross claim on the part of the Client against the Supplier.
- 17.11. To the extent that any Claims under these Terms may be covered by insurance the Client shall obtain from its insurers a waiver of all rights of recourse, including in particular and without limitation, subrogation against the Supplier Group.
- 17.12. All techniques, processes, inventions, trade secrets, equipment, drawings, designs, specifications, documents, proposals and such information concerning the Services or Goods or relating to the Supplier's business of which the Client shall obtain knowledge or information (except to the extent that they are within or fall into the public domain other than by breach of the Contract) shall remain both during and after the completion of the business conducted under the Contract the absolute and exclusive property of the Supplier and the Client shall keep confidential and retain the same with the utmost secrecy and shall use its utmost endeavours to ensure that all its employees, servants and agents procure that all members of the Client Group shall abide by the terms of this provision as though it were binding upon each of them and the Client shall not use same for its own purposes, and shall procure that all members of the Client Group shall not, use the same other than for the purpose of the Goods, or Services received, nor shall it cause or permit anything which may damage or endanger the intellectual property of the Supplier or allow or assist others to do so.

18. Anti-Bribery

- 18.1 The Client shall:
- (i) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
 - (ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (iii) have and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure its compliance with clause 18.1(i) and (iii) and will enforce them where appropriate;
 - (iv) promptly report to the Supplier any request or demand for any undue financial or other advantage of any kind received by the Client in connection with the performance of the Contract; and

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- (v) immediately notify the Supplier in writing if a foreign public official becomes an officer or employee of the Client or acquires a direct or indirect interest in the Client (and the Client warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract).

18.2 The Client shall ensure that any person associated with the Client who is performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Client in clause