

# ULTRA.

Ultra PCS Limited

Standard Terms and Conditions of Sale

## GENERAL CONDITIONS

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## 1. Definitions

**“Acceptance”** means an expression of absolute and unconditional agreement to all the terms set out in the Offer. Acceptance must be communicated in writing. The acceptance must exactly mirror the original Offer made. Any attempted variation of the terms of the original Offer shall be considered a counter-Offer and extinguishes the original Offer made.

**“Agent”** means the relationship that exists between two Parties when one, the Agent, is considered in law to represent the other, called the Principal. Under the Contract, an Agent shall only exist where that person has been given express instructions or permission to act on behalf of the Principal. The Agent is only authorised to act in accordance with such instructions or permission. The Principal shall not be liable for any acts undertaken by the Agent if such acts have not been previously authorized by the Principal in writing.

**“Appropriate Authority”** means those persons authorised by the Parties to receive Confidential Information under the Contract.

**“Authorised Representative”** means those persons designated and duly authorised by the Supplier and designated as such on the Order Acknowledgement or as subsequently notified to the other Party in writing from time to time in terms of these Conditions. For the avoidance of doubt, only the Authorised Representative (notwithstanding the provisions within the definition of “Agent” above) is permitted to act on behalf of the Supplier.

**"Conditions"** means these Standard Terms and Conditions of Sale.

**"Contract"** means any Contract resulting from an Order Acknowledgement.

**"Contract Price"** means the Contract Price defined in Sub-clause 6.1.

**“Delivery”** means the voluntary transfer of possession of the Goods from the Supplier to the Purchaser in accordance with the terms of the Contract.

For the purposes of this Contract, Delivery is Ex-Works in accordance with INCOTERMS 2010 ®. The location of the Supplier’s premises in accordance with this Incoterm is the site of Ultra PCS detailed on the Order Acknowledgement. For the avoidance of doubt, this address is:

ULTRA PCS LIMITED  
Arle Court

Hatherley Lane  
Cheltenham  
Gloucestershire  
GL51 6PN

**“Delivery Address”** means the address of the Seller as stated on the face of the Order Acknowledgement.

**“Delivery Date”** means the date(s) when the Goods will be available for collection from the Supplier’s premises. The Delivery Date for the purposes of the Contract is the date(s) specified in the Order Acknowledgement, or such other date(s) which the Supplier gives the Purchaser notice of from time to time.

**“EAR”** means the Export Administration Regulations contained within the Code of Federal Regulations (CFR) as imposed by the United States Department of Commerce that regulate the export of goods and services identified on the Commodity Control List (“CCL”).

**“Force Majeure”** means those events as described in Clause 9.

**“Goods”** means the Goods which are the subject of a Contract (including any part of them and any part delivered in stages) described in the Order Acknowledgement. For the avoidance of doubt, "Goods" includes materials, spares, equipment, raw materials, finished or semi-finished materials or articles, machinery or commodities. A reference to Goods includes:

- Individual items, or a number of items, whether or not identical or similar; and
- Materials, spares, equipment, articles, machinery or commodities supplied in connection with the Services

**“INCOTERMS® 2010”** means 2010 Edition ICC publication No 715E.

If a Contract is not Ex-Works but is of another type described in INCOTERMS® 2010 (such as CIF) the provisions of INCOTERMS® 2010 in relation to that type of contract shall apply as modified (if at all) by the terms of the Contract. Any deviation from the use of Ex-Works as detailed within the Definition of “Delivery” herein shall be mutually agreed between the Purchaser and the Supplier in writing.

**“Intellectual Property Rights”** means all current and future registered and unregistered trademarks and service marks, patents, registered and unregistered designs, utility models, applications for any of the foregoing, trade names, copyrights, inventions, user rights, know-how and other forms of intellectual property.

**“ITAR”** means the International Traffic in Arms Regulations (22 CFR (Code of Federal Regulations) (CFR) Sections 120-130) as imposed by the United States Department of

State that control the export and import of defense-related articles and services on the United States Munitions List ('USML').

**"Offer"** means an expression of willingness to contract on a specific set of terms, made by the Supplier with the intention that, if the Offer is accepted, the Supplier will be bound by a contract.

**"Order"** means the order placed by the Purchaser.

**"Order Acknowledgement"** means the Supplier's Order Acknowledgement provided in writing in respect of the provision of the Goods and/or Services.

**"Party"** shall mean either the Purchaser or the Supplier. **"Parties"** shall be the collective term.

**"Purchaser"** means the person placing the Order.

**"Quotation"** means the Supplier's Quotation to the Purchaser.

**"Services"** means the services (if any) described in the Order Acknowledgement being performed by or on behalf of the Supplier under the Contract.

**"Supplier"** means Ultra PCS Limited whose registered office is situated at Arle Court, Hatherley Lane, Cheltenham, Gloucestershire, GL51 6PN.

**"Warranties"** means the representations and warranties contained in Clause 17.

**"Warranty Period"** means in the case of Goods, the period of twelve (12) months from the relevant Delivery Date. In the case of any Goods being repaired or replaced by the Supplier during the Warranty Period, the unexpired Warranty Period will recommence from the date upon which the Purchaser is notified by the Supplier that the repairs have been finalised or the replacement Goods are ready and (in either case) available for collection by the Purchaser. In the case of Services, the period of two (2) months after the date that such part of the Services has been performed.

## **2. Validity**

2.1 The Supplier reserves the right to withdraw or cancel any Quotation without liability. Unless previously withdrawn, any Quotation shall remain valid for a period of thirty (30) days from its date unless otherwise stated on the face of the Quotation.

### **3. Formation of the Contract**

- 3.1 A Quotation shall be deemed to be notification of an invitation to treat and shall not constitute an offer.
- 3.2 The Order Acknowledgement constitutes an offer by the Supplier to sell the Goods and/or provide the Services subject to these Conditions.
- 3.3 The Order Acknowledgement is to be accepted by the Purchaser in writing within thirty (30) days of its date. If such acceptance is not received in writing from the Purchaser within the aforementioned time period, such silence shall be deemed to be acceptance of the Offer. Once the Purchaser has accepted the Order Acknowledgment, a binding Contract is formed. Within that thirty (30) day period, the Supplier may withdraw the Offer contained in the Order Acknowledgement at any time before it has been accepted by the Purchaser.
- 3.4 The Order Acknowledgement is personal to the Purchaser and the Purchaser may not assign, transfer or otherwise encumber the Contract or any right, benefit or interest under it, or sub-contract any of the Purchaser's obligations under the Contract without the prior consent of the Supplier in writing.
- 3.5 For the avoidance of doubt, Acceptance is strictly limited to these Conditions. Unless specifically agreed to in writing by an Authorised Representative of the Supplier, the Supplier objects to and is not bound by any term or condition that differs from or adds to this Offer. Any attempted alteration or qualification by the Purchaser of these Conditions and any other term or condition which the Purchaser seeks to impose will be inoperative and inapplicable. The Supplier's provision of the Goods shall be governed solely by the Contract.
- 3.6 No variation to the Contract will be binding unless agreed in writing between Parties. The Supplier's employees or Agents are not authorised to vary the Contract nor make any representations concerning the Goods and/or Services unless confirmed by an Authorised Representative in writing. In entering into the Contract, the Purchaser acknowledges that they are not relying on any variations or representations that are not confirmed in writing.

### **4. Precedence**

- 4.1 In the event of any conflict between the following documents, the order of precedence between them shall be as follows:
  - 4.1.1 The Order Acknowledgement
  - 4.1.2 These Conditions
  - 4.1.3 The Specification/Drawing
  - 4.1.4 Other documents included herein by reference.

4.2 If any Clause (or part of a Clause) of the Contract should be found to be invalid, unlawful or unenforceable by a court having proper authority or if the law changes so that it becomes invalid, unlawful or unenforceable to any extent, then this Clause will apply. The Clause (or part affected) will be treated as having been deleted from the remaining terms of the Contract which will continue to be valid. In addition, the Parties will use reasonable endeavours to replace the deleted Clause (or part of it) with a valid replacement provision which is as close as possible to the one that has been deleted.

## **5. Confidentiality**

5.1 For the purposes of this Sub-clause "Confidential Information" shall mean any information in any written or tangible form which is disclosed from one Party to the other as a result of entering into or performing the Contract which relates to the provisions or subject matter of the Contract, or the negotiations relating to the Contract; and any information which is identified by the legend "Confidential Information" or any other proprietary notice / legend.

5.2 Each Party will at all times during the continuance of the Contract and after its termination keep all Confidential Information that they receive from the other Party confidential and in accordance with the Contract, not disclose any of that Confidential Information to any other person; and not use any Confidential Information that they receive from the other Party for any purpose other than that which is in line with the terms of the Contract.

5.3 Any Confidential Information received by either Party (the "Recipient") may be disclosed to:

5.3.1 An Appropriate Authority;

5.3.2 Any of the Recipient's employees and contractors to such extent only as is necessary for the purposes contemplated by the Contract, provided that it is on a confidential basis.

5.4 For all Confidential Information, the Recipient shall:

5.4.1 Not copy the Confidential Information except as strictly necessary for the purpose of discharging its obligations under the Contract;

5.4.2 Not disclose the Confidential Information to any third party unless so authorised in writing beforehand by the other Party;

5.4.3 Use its best endeavours to protect the Confidential Information diligently against unauthorised access and against loss.

5.4.4 The Party disclosing the Confidential Information may, by notice, require its return and any copies made of it, or any part of it, by the Recipient or, at its own option, require the destruction of the Confidential Information following:

- 5.4.4.1 Fulfillment or accomplishment of the purposes contemplated by the Contract or;
  - 5.4.4.2 Breach of any term of the Contract;
- Whichever is sooner.

- 5.5 The Recipient may disclose the Confidential Information if and to the extent that it is required to do so by law, or to the extent that it is ordered to do so by a court having valid jurisdiction to make such an order.
- 5.6 The Purchaser agrees that the Supplier's Confidential Information is, by its nature, valuable proprietary commercial information, the misuse or unauthorised disclosure of which would be likely to cause the Supplier considerable damage for which monetary damages would not provide adequate compensation. The Purchaser agrees that, in addition to other rights and remedies that may be available to the Supplier, the Supplier is entitled to relief by way of injunction (including interim injunctive relief) available from any court having valid jurisdiction over its terms.
- 5.7 The provisions of this Clause 5 shall survive performance, completion, termination or cancellation of the Contract.

## **6. Contract Price**

- 6.1 The "Contract Price" shall mean the price stated for the Goods and/or Services stated in the Quotation unless subsequently modified in writing by the Supplier's Authorised Representative.
- 6.2 All prices are subject to variation to the extent of any effect upon cost of producing the Goods, carrying out the Services or carrying out the Contract work due to variations after the Quotation date. Therefore, all prices contained within the Contract including the Contract Price are subject to amendment to reflect the following:
  - 6.2.1 Any variation in labour costs or prices or cost of materials;
  - 6.2.2 Any additional cost of any special and/or extra testing required by Purchaser or any Government, Aerospace, Factory or other relevant Authority;
  - 6.2.3 Any costs as a result of any modification, or by any variation in specification or design required by Purchaser, or caused by or due to rectification of errors in drawings, specifications or schedules provided by Purchaser, or faulty material or unsuitable, worn or incomplete tooling supplied by Purchaser;
  - 6.2.4 Any costs as a result of any variation of rates of production or of quantities required by Purchaser;



- 6.3 The descriptions and illustrations contained within the sales literature are approximate only and none of these shall form part of the Contract.
- 6.4 Unless otherwise stated in writing by the Supplier, all prices quoted are Ex-Works Gloucestershire (INCOTERMS® 2010) and are exclusive of any taxes or duties.

## **7. Inspection and Testing**

- 7.1 The Supplier will ensure that the Goods are tested appropriately prior to Delivery. If the Purchaser requires any additional testing, such testing shall be subject to an additional charge which shall be borne by the Purchaser.
- 7.2 The Price of the Goods does not include the price of carrying out Source Inspection or First Article Inspection ('FAI').
- 7.3 If the Purchaser requires a FAI, this must be clearly specified at Request for Quote ('RFQ') stage. In the event that the requirement for Source Inspection or FAI is not specified on the RFQ, the Supplier reserves the right to reject any Order placed by the Purchaser which contains these requirements, or any other requirement for further testing as specified above.

## **8. Delivery**

### **Goods**

- 8.1 Unless the Contract expressly provides otherwise, Delivery of the Goods will be Ex Works in accordance with INCOTERMS® 2010. In the event that another delivery method has been agreed between the Parties in writing, Delivery shall be strictly in accordance with the relevant Incoterm as defined by INCOTERMS® 2010.
- 8.2 Delivery takes place when the Supplier places the Goods at the disposal of the Purchaser at the Supplier's premises in accordance with Ex-Works INCOTERMS® 2010.
- 8.3 Where the Contract provides for Delivery of the Goods in stages, each Delivery will be treated as taking place under a separate Contract. Default or delay by the Supplier in making any single Delivery will not entitle the Purchaser to terminate the Contract as a whole.
- 8.4 The Supplier will endeavor to deliver the total quantity of Goods ordered by the Purchaser at the time specified in the Contract. Nevertheless, the Supplier shall be entitled to make deliveries of a lesser quantity and invoice for such lesser quantity, which shall be paid by the Purchaser and shall be subject to the provisions of Clause 16 (Payment). Time of delivery or performance will not be of the essence.
- 8.5 Any reasonable postponement of performance or of Delivery of any of the Goods caused by delay in procuring materials, production or transport which is not

avoidable (without expenditure or other measures which it would be abnormal or unreasonable for Supplier to make or undertake) shall neither be actionable nor excuse non-acceptance of the Goods when tendered. In no circumstances shall Supplier be liable for any damage or loss resulting from late Delivery of any Goods howsoever caused.

8.6 The Purchaser shall collect the Goods on the Delivery Date from the Delivery Address. If the Purchaser fails to take Delivery of the Goods on the Delivery Date, without limitation of any other right available to the Supplier, the Supplier may at its sole option:

8.6.1 Store the Goods until they have been collected and charge the Purchaser for the reasonable costs of storage (including insurance, preservation and demurrage charges) and any other charges reasonably incurred by the Supplier. The Supplier will be entitled to exercise a right of lien over the Goods in respect of payment of such costs and charges; or

8.6.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Purchaser for the excess over the Price and for the purposes of Clause 12 (Risk), Delivery shall be deemed to have taken place.

## **Services**

8.7 Where the place of supply of the Services is not at the Supplier's premises, the Purchaser shall provide the Supplier with reasonable notification in writing of all regulations that apply to any representatives of the Purchaser prior to the Services being provided. The Purchaser shall also provide the Supplier with all accommodation, services, amenities, facilities, utilities and equipment reasonably requested by the Supplier for the purposes of supplying the Services.

8.8 Unless the Supplier has agreed otherwise in writing, the Delivery Date and any time or period agreed for performance of the Services are estimates only made in good faith. The Supplier shall not be liable for the consequences of any delay and time of Delivery or performance will not be of the essence of the Contract. The Supplier will use reasonable endeavors to meet any estimated date or agreed period for completion of the Services.

## **9. Force Majeure**

9.1. The Supplier shall incur no liability whatsoever for any failure to perform, or for any delay in performing, the Contract, in whole or in part, where the Supplier is delayed by circumstances, whether those circumstances were foreseeable or not or whether existing at the time of contract or not, beyond the control and without the fault or negligence of the Supplier or of its suppliers or subcontractors and which,

despite the exercise of reasonable efforts to mitigate the impact, the Supplier was unable to prevent. ("Force Majeure"). Force Majeure may include but is not limited to acts of God, war, terrorist acts, riots, any laws, orders, rules, ordinances, regulations, restrictions, declarations, or directives promulgated by any federal, state or local governmental body, inability to obtain adequate labour, materials or manufacturing facilities, fires, floods, pandemics, epidemics, quarantine restrictions, freight embargoes, strikes or unusually severe weather, or action of the Purchaser. Where Force Majeure is declared, the time for performance and/or Delivery and/or dispatch shall, if the Supplier so requires, be extended by a reasonable period if any such occurrence, inability or cause shall take place or arise. The Supplier shall not be deemed to be in default under the Agreement due to a Force Majeure event.

## **10. Carrier and Packaging**

10.1 Unless otherwise specified, the Contract is Ex-Works Gloucestershire in accordance with INCOTERMS ® 2010. The Purchaser is responsible for nominating the carrier and for the payment of any charges associated with delivery. The Purchaser must obtain, at its own expense, any export or import licence or other official authorizations and take responsibility for all customs formalities, payments, taxes or duties for the export or import of the Goods. All Goods are packed to a Retail Trade Pack standard unless otherwise agreed in writing. Any special packaging requirements shall be subject to an additional charge which shall be borne by the Purchaser.

## **11. Export Control**

11.1 Goods or Services provided by the Supplier may be subject to UK Government Export Controls and/or US Government Export Control (i.e. EAR/ITAR). The Purchaser will be responsible for promptly supplying the Supplier with any necessary support documents required to comply with UK Export controls and/or US Export Controls for any Contract. The Supplier shall not be responsible should it be unable to obtain UK Export or US Export authorisations. Any inability to procure the afore mentioned export authorisations shall be deemed Force Majeure in accordance with Clause 9 hereof.

11.2 If the Goods or Services are subject to ITAR, an End User Undertaking (EUU) will be required at the point of order to support the necessary licence application to the Directorate of Defense Trade Controls (DDTC). The EUU supplied must fully and specifically identify all intermediary parties as well as the End User of the item. It is the responsibility of the Purchaser to ensure that all Parties with access to the ITAR Controlled Product are specifically referenced on the EUU. Furthermore, the Purchaser understands and accepts that any licence granted by the DDTC will be

based on the Purchaser's EUU. Any Order for items subject to ITAR Control received without an acceptable EUU will be rejected.

- 11.3 The Purchaser is responsible for complying with UK Government Export Control and/or US Government Export Control, should the Goods or Services be considered for re-export.
- 11.4 Please note that the status/classification of the Goods applies at the time of quoting only and may be subject to change and/or reclassification of the Goods as directed by the UK or the US Government. Please note that any changes, reclassification, interpretation or application of UK or US Export Controls is subject to the discretion of those Governments and the Parties agree to comply with such controls.

## **12. Risk**

- 12.1 The risk in the Goods shall pass to the Purchaser upon Delivery of the Goods by the Supplier in accordance with Ex-Works, INCOTERMS® 2010. The Supplier shall bear the risk of loss or damage to the Goods until they have been placed at the disposal of the Purchaser at the Supplier's facility ('Delivery'). Following Delivery, the Purchaser bears all risk of loss or damage to the Goods.

## **13. Transit**

- 13.1 In the event that the Supplier is responsible for shipment of the Goods, the Purchaser shall notify the Supplier of any damage to or loss of Goods in transit within three (3) days of receipt and of any non-Delivery of any consignment within ten (10) days of receipt of advice note.

## **14. Acceptance and Rejection**

- 14.1 Acceptance of the Goods is deemed to have taken place if the Purchaser does not reject the Goods within thirty (30) days from the date of Delivery in accordance with Clause 8 (Delivery).
- 14.2 Notice of Rejection of the Goods must be received within 30 days from the date of Delivery in writing, including full details of the reason for Rejection. For the avoidance of doubt, if the Purchaser fails to properly exercise its right of rejection in accordance with the provisions of the Contract, the Purchaser loses its right to reject the Goods.

## **15. Passing of Property**

15.1 Until the Supplier has been paid in full for Goods, and subject to the Purchaser's right of disposal at 15.1.4 below, the following conditions apply:

- 15.1.1 Such Goods remain the property of the Supplier until the Supplier has received in cash or cleared funds, payment in full of the Price and all other debts due by the Purchaser to the Supplier. Payment in full shall be considered to have been made to the extent that the monies owed have been received into the Supplier's bank. Note that the provisions of this Sub-clause shall in no way effect the passing of risk to the Purchaser;
- 15.1.2 The Supplier may at any time or times recover and/or resell all or any such Goods for which payment is overdue in whole or in part, and for that purpose the Supplier or its Agent may enter upon any land or building where such Goods are;
- 15.1.3 The Purchaser will store the Goods in a warehouse or other suitable premises, keep the Goods entirely separate from the Purchaser's Goods and those of third parties and keep the Goods properly protected, insured and identified as the Supplier's property;
- 15.1.4 The Purchaser has the right to dispose of such Goods in the course of its business for the account of the Supplier and to pass good title to such Goods to its customer being a bona fide Purchaser for value; and
- 15.1.5 In the event of such disposal the Purchaser has the fiduciary duty to the Supplier to account to the Supplier for the proceeds but may retain therefrom any excess of such proceeds over the amount outstanding under the Contract.

## **16. Payment**

16.1 The Purchaser is bound to pay the Contract Price in accordance with the terms of the Contract.

16.2 All accounts are strictly net and are payable in full not later than the thirtieth (30<sup>th</sup>) day following the date of the invoice. If the Supplier shall arrange for storage of any Goods under Condition 8 above the Supplier shall have the right to present its invoice for payment at any time thereafter and payment shall become due thereon as provided above. Should the Purchaser fail to make any payment when due to the Supplier (whether under the Contract or any other contract) the Supplier shall have the right by notice in writing forthwith to suspend all further manufacture and/or deliveries until the default be made good or at the Supplier's absolute discretion to terminate the Contract in relation to Goods which remain to be

delivered and without prejudice to any other rights or remedies which may be available to the Supplier.

- 16.3 Where due payment of the price or any part thereof is not made, the Supplier, without prejudice to its other rights, shall be entitled to charge interest on the outstanding amount at the rate of 2.5% per month from due date of payment until payment.
- 16.4 If the Purchaser shall cancel the Contract or purport to amend the Contract reducing the quantity of Goods ordered, then without prejudice to its other rights, the Supplier shall have the right to present its invoice for the full Contract Price and payment shall be due thereon as if Delivery had been made on the date of cancellation or purported amendment.

## **17. Warranty**

- 17.1 The Supplier warrants to the Purchaser that the Goods will be free from defects in material and workmanship and comply with the Contract.
- 17.2 The Supplier warrants to the Purchaser that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such quality standards as it is reasonable for the Purchaser to expect, giving due regard to the circumstances of the provision of the Service.
- 17.3 Subject to the foregoing, if it is demonstrated to the Supplier's reasonable satisfaction that any of the Goods have not been supplied, or the Services have not been performed in accordance with the Warranties, then the Supplier's sole liability to the Purchaser will be limited to either of the following (which the Supplier may determine at its sole discretion):
- 17.3.1 Repairing or replacing the Goods or re-performing the Services in accordance with the Contract as soon as reasonably practicable thereafter in the circumstances; or
  - 17.3.2 Refunding the part of the Contract Price that relates to the affected Goods or Services.
- 17.4 For the avoidance of doubt, the Purchaser will not have the right to require third parties to repair the Goods or re-perform the Services and if the Purchaser does so, the Purchaser will have no right to require the Supplier to meet such third parties' expenses and the Warranty Period will automatically terminate.
- 17.5 Separate from Clauses 12 (Risk) and 15 (Passing of Property), the property in any Goods or any part of them that are returned to the Supplier by the Purchaser and for which a refund or replacement is given in terms of Sub-clause 17.3 above, will belong to the Supplier.
- 17.6 The foregoing Warranty provisions shall constitute the Supplier's entire and complete liability in respect of the Goods and/or Services supplied.

## **18. Obsolescence**

- 18.1 The Supplier shall not be liable or responsible for ensuring the continued supply and maintainability of the Goods, whether they are of the Supplier's, Purchaser's or a third party's design. This Clause 18 shall apply unless the Goods are covered by the provisions contained within Clause 17 (Warranty).
- 18.2 The Contract Price for the Goods and/or Services assumes that there are and will be no obsolescence issues. Any obsolescence issues that are identified will, if required by the Purchaser, be subject to a separate Contract for the investigation and replacement of the obsolete parts.

## **19. Supplier's Liability**

- 19.1 Except as expressly stated in the Contract, all terms, conditions, warranties and representations, whether express or implied by statute, common law, usage or otherwise, are excluded to the maximum extent permitted by law.
- 19.2 Subject to sub-clause 19.4, the Supplier's aggregate liability for all events arising out of or in connection with the Contract shall be limited to the value of the Contract Price.
- 19.3 Subject to clause 19.4, the Supplier shall incur no liability whatsoever (including without prejudice to the generality of the foregoing any liability in tort) for any injury, loss, damage, or liability suffered or sustained by Purchaser or Purchaser's property, or by any other party or by any other party's property, in the course of or as a result of any use, handling, application, supply delivery resale or disposition of any Goods however the same may have been caused and notwithstanding that the same may have been due to any act, omission, negligence or default of the Supplier or its supplier/s or sub-contractor/s or Agent/s or any employee or Agent of the Supplier or any such person and Purchaser hereby waives to the Supplier all rights in respect thereof.
- 19.4 Notwithstanding any other provisions of this Contract, the Supplier shall in no circumstance be liable for:
- 19.4.1 Indirect or consequential loss or damages; or
  - 19.4.2 Loss of profits; loss of business; loss of contracts; loss of goodwill; loss of revenue; loss of production; loss of anticipated savings or loss arising from any claim made against the Customer by any third party; in each case whether caused by breach of contract (including the Contract), negligence, breach of any statutory duty or arising in any other way.

19.5 Nothing in the Contract is intended to limit or exclude the Supplier's liability for:

19.5.1 Death or personal injury;

19.5.2 Fraud; or

19.5.3 Anything else which cannot by law be limited or excluded.

19.6 So far as permitted by Law, the Supplier's liability shall be limited as follows;

19.6.1 The Supplier will not be liable for breach of the Warranties unless the Purchaser has notified the Supplier promptly in writing within the relevant Warranty Period that a breach has occurred.

19.6.2 The Supplier will not be liable for any defects in the Goods, unless the Goods to which the claim relates are promptly returned to the Delivery Address, by prior arrangement with the Supplier.

19.6.3 The Supplier will not be liable if the Goods are resold in anything other than their original packaging.

19.6.4 The Supplier will not be liable in respect of any defect in the Goods arising from fair wear and tear; abnormal working conditions; wilful damage or misuse; negligence on the Purchaser's part; or alteration or repair of the Goods without the Supplier's prior approval in writing.

19.6.5 The Supplier will not be liable to the Purchaser if any defect in the Goods or Services arises from any drawing, design or specification supplied by the Purchaser.

19.6.6 The Supplier will not be responsible for any removal or reinstallation costs or any charges relating to dismantling or reassembling any of the Goods and any charges in this connection will be paid by the Purchaser.

19.7 The Purchaser will keep the Supplier indemnified against all costs, claims, demands, expenses and liabilities of whatever nature (including legal costs and expenses) made by third parties and caused in whole or in part by, or arising out of, any act or omission of the Purchaser, the Purchaser's employees or Agents in connection with the Goods and/or Services, to the extent that the same are caused by or related to:

19.7.1 Any claim for personal injury or death or loss or damage directly or indirectly occasioned by default (including non-compliance with any statutory or other obligation in relation to the Goods or Services), failure to follow the Supplier's instructions (whether oral or written), or misuse or mal-operation of the Goods by or on the Purchaser's part or on the part of any person or persons other than on behalf of the Supplier;



- 19.7.2 Any designs, drawings or specifications given to the Supplier by the Purchaser in respect of the Goods or the Services;
- 19.7.3 Any materials or products supplied by the Purchaser to the Supplier and incorporated or used by the Supplier in the supply of the Goods or the performance of the Services; or
- 19.7.4 The improper incorporation, assembly, use, processing, storage or handling of the Goods by the Purchaser.

19.8 The indemnity identified in Sub-clause 19.7 will continue in force even if the Contract is terminated.

## **20. Termination**

20.1 If the Purchaser elects to cancel the Contract, the Supplier reserves the right to charge the full Contract Price.

20.2 The Supplier may cancel the Contract in respect of all or part only of the Goods and/or Services by giving the Purchaser at least thirty (30) days' notice at any time prior to the Delivery Date, in which event the Supplier's sole liability will be to repay to the Purchaser any part of the Price which the Purchaser has paid to the Supplier for the Goods or Services in respect of which the Supplier has exercised its right of cancellation.

20.3 Without limiting any other remedy, either Party may terminate the Contract without liability by giving the other Party notice at any time if:

20.3.1 The other Party makes a voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) if the other Party becomes bankrupt or (being a company) the other Party becomes insolvent or is subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);

20.3.2 A creditor takes possession of, or a receiver or judicial factor is appointed over, any of the other Party's property or assets;

20.3.3 The other Party ceases, or threatens to cease, to carry on business.

20.4 Each Party will be bound to give to the other Party immediate notice if any of the events listed in Clauses 20.3.1, 20.3.2 or 20.3.3 occurs to it.

20.5 Termination of the Contract will not affect the accrued rights of the Supplier, or the Supplier's other rights and remedies.

## **21. Infringement**

- 21.1 If Goods produced or work carried out in accordance with the Purchaser's specifications or instructions infringe or are alleged to infringe any patent, registered design, trade mark, copyright or other Intellectual Property Rights the Purchaser shall indemnify the Supplier against all claims, damages, loss, costs, expenses and liability which may be made against the Supplier or which the Supplier may sustain or incur by reason of or in connection with such infringement or alleged infringement.

## **22. Intellectual Property Rights**

- 22.1 All Intellectual Property Rights in the Goods and/or Services provided under the Contract shall vest solely in the Supplier.
- 22.2 Unless otherwise specifically stated in the Contract, all inventions, designs or processes evolved or produced during or as a result of work carried out under the Contract shall be the sole property of the Supplier and the Purchaser hereby assigns and agrees to assign to the Supplier all future copyright and Intellectual Property Rights therein and in all drawings, data and documentation so evolved or produced.

## **23. Rights**

- 23.1 The rights and remedies of the Supplier expressed herein are additional to, and are not in substitution of or derogation from, any other rights or remedies available to the Supplier under statute or common law or otherwise.
- 23.2 No waiver by the Supplier of any breach of the Contract by the Purchaser will be considered as a waiver of any subsequent breach of the same or any other provision.

## **24. Notices**

- 24.1 Any notice to a party under this Contract shall be in writing in the English language, signed by or on behalf of the party giving it and shall be delivered personally, by pre-paid first class post (or airmail, if abroad), pre-paid recorded delivery (or international equivalent) to the address of the party appearing in clause 1 – Definitions (for the Supplier) or the address recorded on the Purchaser's Order (for the Purchaser), or as otherwise notified in writing from time to time. A notice shall be deemed to have been served at the time of delivery, if delivered personally, or

(forty eight) 48 hours after posting for an address in the United Kingdom and (five) 5 Business Days after posting for any other address.

## **25. Law**

25.1 The Contract shall be governed by and construed in all respects in accordance with English Law and the Purchaser hereby irrevocably accepts the exclusive jurisdiction of the English Civil Courts in so far as any disputes arising under or in connection with the Contract are concerned. The Uniform Law on the International Sale of Goods shall not apply.

## **26. Entire Agreement**

26.1 This Contract constitutes the entire agreement between the Supplier and the Purchaser in respect of an Order for any of the Goods and/or Services and will supersede and exclude all prior representations, proposals or agreements whether oral or in writing.

26.2 Each party acknowledges that it has entered into the Contract in reliance only on the representations, warranties, promises and terms contained or expressly referred to in this Contract and save as expressly set out in the Contract, neither party shall bear any liability in respect of any other representation, warranty or promise made prior to the date of the Contract unless it can demonstrate that it was made fraudulently.