

Calder Industrial Materials

Terms and conditions for the sale of goods and services

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1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Applicable Law	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;
Bribery Laws	means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday;
Conditions	means the Supplier's terms and conditions of sale set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how, or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by the Supplier in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means this agreement between the Supplier and the Customer for the sale and purchase of the Deliverables incorporating these Conditions and the Order, and including all its schedules, attachments, annexures and statements of work;
Control	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and Controls, Controlled and under common Control shall be construed accordingly;
Customer	means the named party in the Contract which has agreed to purchase the Deliverables from the Supplier and whose details are set out in the Order;
Deliverables	means the Goods or Services or both as the case may be;
Documentation	means any descriptions, instructions, manuals, literature, technical details or other

related materials supplied in connection with the Deliverables;

Force Majeure

means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

Goods

means the goods and related accessories, spare parts and Documentation and other physical material set out in the Order or understood by the parties to be included in the Goods and to be supplied by the Supplier to the Customer in accordance with the Contract;

Intellectual Property Rights

means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:

- (a) whether registered or not,
- (b) including any applications to protect or register such rights,
- (c) including all renewals and extensions of such rights or applications,
- (d) whether vested, contingent or future,
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world

	existing;
IPR Claim	has the meaning given in clause 14.1;
Location	means the address or addresses for delivery of the Goods and performance of the Services as set out in the Order;
Modern Slavery Policy	means the Supplier's anti-slavery and human trafficking policy in force and notified to the Customer from time to time;
Order	means the order for the Deliverables from the Supplier placed by the Customer;
Price	has the meaning given in clause 3.1;
Services	means the services set out in the Order and to be supplied by the Supplier to the Customer in accordance with the Contract;
Specification	means the description, any samples, or Documentation provided for the Deliverables set out or referred to in the Contract;
Supplier	means Calder Industrial Materials Limited, Company Number 00028073, VAT number GB 705 3233 70;
VAT	means value added tax under the Value Added Tax Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables; and
Warranty Period	has the meaning given in clause 9.1.

1.2 In these Conditions, unless the context otherwise requires:

- 1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
- 1.2.3 a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice-versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.10 a reference to legislation is a reference to that legislation as in force at the date of the Contract except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract;
- 1.2.11 a reference to legislation includes all subordinate legislation made as at the date of the Contract under that legislation; and
- 1.2.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Application of these conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Customer and the Supplier respectively.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase the Deliverables subject to the Contract including these Conditions.
- 2.5 If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 2.6 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:
 - 2.6.1 the Supplier's written acceptance of the Order; or
 - 2.6.2 the Supplier delivering or performing the Deliverables or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 2.7 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.

2.8 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Deliverables and are incapable of being accepted by the Customer.

2.9 Marketing and other promotional material relating to the Deliverables are illustrative only and do not form part of the Contract.

3 Price

3.1 The price for the Deliverables shall be the Supplier's quoted price as advised or updated by the Supplier from time to time before the date the Order is placed (the **Price**).

3.2 Unless stated otherwise in the Supplier's quotation or otherwise agreed by the Supplier in writing, the Prices are exclusive of:

3.2.1 delivery, insurance, duties and/or tariffs, and all other related charges or taxes which shall be charged in addition to the Prices, and

3.2.2 VAT (or equivalent sales tax).

3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.

3.4 The Supplier may increase the Prices at any time by giving the Customer notice in writing prior to Delivery, to reflect any increase in the cost of the Goods or Services due to:

3.4.1 Any factor beyond the Supplier's control (including foreign exchange fluctuations and changes in applicable tax rates);

3.4.2 Any request by the Customer to change the delivery date(s), quantities, or types of goods ordered;

3.4.3 Any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

4 Payment

4.1 Unless otherwise agreed between the Parties, the Supplier shall, in the case of Goods, invoice the Customer in full at the point of despatch by the Supplier, or in the case of Services invoice the Customer in full or in part at any time following commencement of the Services.

4.2 The Customer shall pay all invoices:

4.2.1 in full without deduction or set-off, in cleared funds within **30 days** following the end of the month in which each invoice is raised; and

4.2.2 to the bank account nominated by the Supplier.

4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:

4.3.1 the Supplier may, without limiting its other rights, charge interest on such sums at 6% a year above the Official Bank Rate of the Bank of England from time to time in force, and

4.3.2 interest shall accrue on a daily basis and apply from the due date for payment until actual payment in full, whether before or after judgment.

5 Credit limit and Credit worthiness

5.1 The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

5.2 If, in the Supplier's opinion, the Customer's credit worthiness deteriorates to an unacceptable level before delivery of the Goods and/or provision of the Services, the Supplier may require payment for such Deliverables in full or in part prior to delivery or supply, or for the provision of security for payment by the Customer in such form as is acceptable to the vendor.

5.3 The Supplier may refuse to accept further orders or deliver further goods to a Customer that is deemed to be an unacceptable credit risk other than against immediate cash payment in full for all outstanding amounts and further orders.

5.4 Any credit limits set by the Supplier are at the Supplier's sole discretion and the Supplier has no obligation to provide justification thereof.

6 Delivery and performance

6.1 The Goods shall be delivered by the Supplier, or its nominated carrier, to the Location specified in the Order. If no location is specified on the Order, delivery shall be to the Supplier's place of business, ready for collection by the Customer or the Customer's nominated carrier.

6.2 The Goods shall be deemed delivered upon arrival of the Goods at the Location by the Supplier or its nominated carrier (as the case may be).

6.3 The Services shall be performed by the Supplier at the Location on the date(s) specified in the Order.

6.4 The Services shall be deemed delivered by the Supplier only on completion of the performance of the Services at the Location.

6.5 The Supplier may deliver the Goods or perform the Services in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6.6 Each delivery or performance of the Deliverables shall be accompanied by a delivery note stating:

6.6.1 the date of the Order;

6.6.2 the relevant Customer and Supplier details;

6.6.3 if Goods, the product numbers and type and quantity of Goods in the consignment;

6.6.4 if Services, the category, type and quantity of Services performed;

6.6.5 any special instructions, handling and other requests; and

- 6.6.6 in the case of Goods, whether any packaging material is to be returned, in which case the Customer shall, after the Goods are unpacked, make them available for collection by the Supplier at the Supplier's expense.
- 6.7 Time is not of the essence in relation to the performance or delivery of the Deliverables. The Supplier shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are indicative only.
- 6.8 The Supplier shall not be liable for any delay in or failure of performance caused by:
- 6.8.1 the Customer's failure to make the Location available;
 - 6.8.2 the Customer's failure to prepare the Location as required for the Deliverables;
 - 6.8.3 the Customer's failure to provide offloading facilities at the Location if required for the Deliverables;
 - 6.8.4 the Customer's failure to provide the Supplier with adequate instructions for performance or delivery; or
 - 6.8.5 Force Majeure.
- 6.9 If the Customer fails to accept delivery of the Goods the Supplier shall store and insure the Goods pending delivery, and the Customer shall pay all reasonable storage and insurance charges.
- 6.10 If after **5 Business Days** following the due date for delivery or collection of the Goods, the Customer has not taken delivery of or collected them, the Supplier may resell or otherwise dispose of the Goods without any obligation or liability to the Customer.

7 Risk

Risk in the Goods shall pass to the Customer on delivery, prior to unloading.

8 Title

- 8.1 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.
- 8.2 Until title to the Goods has passed to the Customer, the Customer shall:
- 8.2.1 hold the Goods as bailee for the Supplier;
 - 8.2.2 store the Goods separately from all other material in the Customer's possession;
 - 8.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
 - 8.2.4 insure the Goods from the date of delivery: (i) with a reputable insurer, (ii) against all risks, (iii) for an amount at least equal to their Price, (iv) noting the Supplier's interest on the policy;
 - 8.2.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;

- 8.2.6 not remove or alter any mark on or packaging of the Goods;
 - 8.2.7 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 18.1.1 to 18.1.4 or 18.2.1 to 18.2.14; and
 - 8.2.8 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.
- 8.3 Notwithstanding clause 8.2, the Customer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses [18.1.1 to 18.1.4 or 18.2.1 to 18.2.14] has occurred or is likely to occur.
- 8.4 If the Customer resells the Goods in accordance with clause 8.3, title to the Goods shall pass to the Customer immediately prior to the resale.
- 8.5 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses [18.1.1 to 18.1.4 or 18.2.1 to 18.2.14], the Supplier may:
- 8.5.1 require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and
 - 8.5.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

9 Warranty

- 9.1 The Supplier warrants that, the Deliverables shall, for a period of **one month** from delivery (the **Warranty Period**):
- 9.1.1 conform in all material respects to any sample and to the Specification;
 - 9.1.2 be free from material defects in materials and workmanship;
 - 9.1.3 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - 9.1.4 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13; and
 - 9.1.5 any media on which the results of the Services are supplied shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 9.2 The Customer warrants that it has provided the Supplier with all relevant, full and accurate information as to the Customer's business and needs.
- 9.3 The Customer may reject any of the Deliverables that do not comply with clause 9.1, provided that the Customer:
- 9.3.1 serves a written notice on the Supplier:

- (a) during the Warranty Period in the case of defects discoverable by a physical inspection; or
 - (b) in the case of latent defects, during the Warranty Period or, if the Warranty Period has expired, within **48 hours** following the Customer becoming aware (or should reasonably have expected to become aware) of the defect;
- 9.3.2 provides the Supplier with sufficient information as to the nature and extent of the defects and, in the case of Goods, provides photographic evidence of the defect(s) and advises the uses to which the Goods had been put prior to the defect arising;
- 9.3.3 has taken all reasonable care in storing and handling the Goods, including protecting the Goods from exposure to the weather;
- 9.3.4 gives the Supplier a reasonable opportunity to examine the claim of the defective Deliverables; and
- 9.3.5 at its own cost, returns any Goods rejected under clause 9.3. Risk and title in the rejected Goods shall pass back to the Supplier at the point at which the Goods are returned.
- 9.4 As the Customer's sole and exclusive remedy, as soon as reasonably practicable but in any event within 30 Business Days after receiving a written notification in accordance with clause 9.3, the Supplier shall, at the Supplier's option:
 - 9.4.1 in the case of Goods, repair or replace the Goods;
 - 9.4.2 in the case of Services, promptly remedy the non-compliance;
 - 9.4.3 in the case of Services, re-perform the relevant Services; or
 - 9.4.4 provide the Customer with a full refund of the Price paid by the Customer for the non-compliant Deliverables.
- 9.5 The provisions of these Conditions shall apply to any Deliverables that are corrected, repaired, remedied or re-performed with effect from delivery or performance of those Deliverables.
- 9.6 The Supplier shall not be liable for any breach of clause 9.1:
 - 9.6.1 where such failure arises by reason of wear and tear, the Customer's or a third party's wilful damage, or the Customer's or a third party's negligence, or could be expected to arise in the normal course of use of the Goods;
 - 9.6.2 to the extent caused by the Customer's failure to comply with the Supplier's instructions in relation to the Deliverables, including any instructions on installation, operation, storage or maintenance;
 - 9.6.3 to the extent caused by the Supplier following any specification, instruction or requirement of or given by the Customer in relation to the Deliverables;
 - 9.6.4 where the Customer modifies any Deliverables without the Supplier's prior written consent or, having received such consent, not in accordance with the Supplier's instructions; or

- 9.6.5 where the Customer uses any of the Deliverables after notifying the Supplier that they do not comply with clause 9.1.
- 9.7 Clauses 9.3 and 9.4 set out the Customer's sole and exclusive remedies (howsoever arising, whether in contract, tort, negligence or otherwise) for any breach by the Supplier of clause 9.1. Except as set out in this clause 9:
- 9.7.1 the Supplier gives no warranties or undertakings and makes no representations in relation to the Deliverables;
- 9.7.2 the Supplier shall have no liability for their failure to comply with clause 9.1; and
- 9.7.3 all warranties, terms and conditions (including the conditions implied by sections 12–16 of the Supply of Goods and Services Act 1982 and sections 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by Applicable Law.

10 Anti-bribery

- 10.1 For the purposes of this clause 10 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 10.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use reasonable endeavours to ensure that:
- 10.2.1 all of that party's personnel;
- 10.2.2 all others associated with that party; and
- 10.2.3 all of that party's subcontractors;
- involved in performing the Contract so comply.
- 10.3 Without limitation to clause 10.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.
- 10.4 The Customer shall immediately notify the Supplier as soon as it becomes aware of a breach or possible breach by the Customer of any of the requirements in this clause 10.
- 10.5 Any breach of this clause 10 by the Customer shall be deemed a material breach of the Contract that is not remediable and shall entitle the Supplier to immediately terminate the Contract by notice under clause 18.1.1.

11 Anti-slavery

- 11.1 The Supplier shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy.
- 11.2 The Customer undertakes, warrants and represents that:

- 11.2.1 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;
- 11.2.2 it has implemented due diligence procedures to ensure compliance with the Modern Slavery Act 2015 and the Modern Slavery Policy in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to the Supplier on request at any time throughout the Contract;
- 11.3 The Customer shall notify the Supplier immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Customer's obligations under clause 11.2. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Customer's obligations.
- 11.4 Any breach of clause 11.2 by the Customer shall be deemed a material breach of the Contract and shall entitle the Supplier to terminate the Contract with immediate effect.

12 Indemnity and insurance

- 12.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liabilities, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.
- 12.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom or such other country by agreement in writing with the Supplier to cover its obligations under the Contract. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

13 Limitation of liability

- 13.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 13.
- 13.2 Subject to clauses 13.5 and 13.6, the Supplier's total liability shall not exceed the **Price**.
- 13.3 Subject to clauses 13.5 and 13.6, the Supplier shall not be liable for consequential, indirect or special losses.
- 13.4 Subject to clauses 13.5 and 13.6, the Supplier shall not be liable for any of the following (whether direct or indirect):
- 13.4.1 loss of profit;
 - 13.4.2 loss of revenue;
 - 13.4.3 loss or corruption of data;
 - 13.4.4 loss or corruption of software or systems;
 - 13.4.5 loss or damage to equipment;
 - 13.4.6 loss of use;

- 13.4.7 loss of production;
 - 13.4.8 loss of contract;
 - 13.4.9 loss of commercial opportunity;
 - 13.4.10 loss of savings, discount or rebate (whether actual or anticipated);
 - 13.4.11 harm to reputation or loss of goodwill; and/or
 - 13.4.12 loss of business.
- 13.5 The limitations of liability set out in clauses 13.2 to 13.4 shall not apply in respect of any indemnities given by the Customer under the Contract.
- 13.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 13.6.1 death or personal injury caused by negligence;
 - 13.6.2 fraud or fraudulent misrepresentation;
 - 13.6.3 any other losses which cannot be excluded or limited by Applicable Law;

14 Intellectual property

- 14.1 The Supplier shall indemnify the Customer from and against any losses, damages, liabilities, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use of the Deliverables infringes the Intellectual Property Rights of any third party (**IPR Claim**), provided that the Supplier shall have no such liability if the Customer:
- 14.1.1 does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
 - 14.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;
 - 14.1.3 does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
 - 14.1.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
 - 14.1.5 does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer; or
 - 14.1.6 uses the Deliverables in combination with any other goods or services, which without such combination, no IPR Claim could or would have been made.
- 14.2 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:

- 14.2.1 procure for the Customer the right to continue receiving the benefit of the relevant Deliverables; or
 - 14.2.2 modify or replace the infringing part of the Deliverables so as to avoid the infringement or alleged infringement, provided the Deliverables remain in material conformance to their Specification.
- 14.3 The Supplier's obligations under clause 14.1 shall not apply to Deliverables modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liabilities, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.

15 Confidentiality and announcements

- 15.1 The parties shall keep confidential all Confidential Information of the other Party and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 15.1.1 any information which was in the public domain at the date of the Contract;
 - 15.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 15.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier; or
 - 15.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 15.2 This clause shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.
- 15.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

16 Data protection

- 16.1 Each party shall comply with its respective obligations, and may exercise its respective rights and remedies, under the schedule.

17 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 60 days, either party may terminate the Contract by written notice to the other party.

18 Termination

- 18.1 The Supplier may terminate the Contract and/or any other contract(s) which it has with the Customer at any time by giving notice in writing to the Customer if:

- 18.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;
 - 18.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
 - 18.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 30 days after the Supplier has given notification that the payment is overdue; or
 - 18.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 18.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 18.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 18.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
 - 18.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 18.2.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
 - 18.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
 - 18.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
 - 18.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 18.2.8 has a resolution passed for its winding up;
 - 18.2.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 18.2.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within [seven] days of that procedure being commenced;
 - 18.2.11 has a freezing order made against it;
 - 18.2.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items; or
 - 18.2.13 is subject to any events or circumstances analogous to those in clauses 18.2.1 to 18.2.12 in any jurisdiction;
- 18.3 The Supplier may terminate the Contract at any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control.

18.4 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 18, it shall immediately notify the Supplier in writing.

18.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

19 Notices

19.1 Any notice or other communication given by a party under these Conditions shall:

19.1.1 be in writing and in English;

19.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and

19.1.3 be sent to the relevant party at the address set out in the Contract.

19.2 Notices may be given, and are deemed received:

19.2.1 by hand: on receipt of a signature at the time of delivery;

19.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;

19.2.3 by other signed-for postal service: at 9.00 am on the fourth Business Day after posting; or

19.2.4 by email: on receipt of a delivery OR read receipt email from the correct address.

19.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 19.1 and shall be effective:

19.3.1 on the date specified in the notice as being the date of such change; or

19.3.2 if no date is so specified, five Business Days after the notice is deemed to be received.

19.4 All references to time are to the local time at the place of deemed receipt.

19.5 This clause 19 does not apply to notices given in legal proceedings or arbitration.

20 Cumulative remedies

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

21 Further assurance

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

22 Entire agreement

- 22.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 22.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 22.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

23 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

24 Assignment

- 24.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, such consent not to be unreasonably withheld or delayed.

25 Set off

- 25.1 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

26 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

27 Equitable relief

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

28 Severance

- 28.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 28.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such

deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

29 Waiver

29.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

29.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

30 Compliance with law

The Customer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

31 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict.

32 Costs and expenses

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

33 Third party rights

33.1 Except as expressly provided for in clause 34.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

33.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

34 Dispute resolution

34.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 35.

34.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

34.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedure:

34.3.1 Within five Business Days of service of the notice, the commercial representatives of each of the parties shall meet to discuss the dispute and attempt to resolve it.

34.3.2 If the dispute has not been resolved within ten Business Days of the first meeting of the parties' representatives, then the matter shall be referred to a senior executive or persons of equivalent seniority of each of the parties. The senior executives (or equivalent) shall meet within 5 Business Days to discuss the dispute and attempt to resolve it.

34.4 Until the parties have completed the steps referred to in clause 35.3, and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief from the courts.

35 Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

36 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).