

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. INTERPRETATION

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

Confidential Information: Any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential, or the information could reasonably be supposed to be confidential.

Customer: the person, firm or company who purchases the Goods and/or Services from the Company.

Company: Pegasus Profiles Limited, Pegasus Profiles (Southern) Limited and Pegasus Profiles (Central) Limited.

Contract: any contract between the Company and the Customer for the Supply of any Goods and/or Services, incorporating these conditions.

Conditions: these Terms and Conditions of Supply.

Delivery Point: the place where delivery of the Goods is to take place under Condition 4.

Drawings and/or Patterns: Any drawing or pattern provided to the Company by the Customer for use by the Company in the performance of any Services or the production of any Goods and which is provided by the Customer to the Company in hard copy format, by fax or by electronic transmission.

Free Issue Materials: any material provided to the Company by or on behalf of the Customer for use by the Company in the performance of any Services, or the production of any Goods.

Goods: any goods agreed in the Contract to be produced by the Company for the Customer and/or sold by the Company to the Customer (including any part or parts of them) including, but not limited to, any goods which are derived from, or otherwise related to, any Free Issue Materials.

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

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

Supply: the production and/or sale of any Goods by and/or from the Company to and/or for the Customer, and/or the performance of any Services by the Company for the Customer. For the avoidance of doubt, any Goods so produced and/or sold, and/or Services so performed, (or to be so produced, sold or performed, as applicable), are **Supplied**.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these Conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to the Supply of any and all Goods and Services by the Company and any variation to these Conditions and any representations about any Goods and/or Services shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each written purchase order or acceptance of a quotation for Goods and/or Services by the Customer from the Company shall be deemed to be an offer by the Customer to procure Goods and/or Services subject to these Conditions.
- 2.5 No order placed by the Customer shall bind the Company until the Company has accepted the Customer's order either verbally or in writing.
- 2.6 Without prejudice to the provisions of Condition 2.5, if the Customer wishes to change any order, (which, for the avoidance of doubt shall include, but shall not be limited to, any amendment, addition or substitution with respect to any related Drawings and/or Patterns, Free Issue Materials or specification), any such change is subject to acceptance by the Company and the Customer must pay any additional charges associated with fulfilling the changed order.
- 2.7 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.8 Any quotation is given on the basis that no Contract shall come into existence until the Company has accepted the Customer's order pursuant to Condition 2.5 above. Any quotation is valid for a period of 30 days only from its date (unless otherwise specified), provided that the Company has not previously withdrawn it.

3. DESCRIPTION

- 3.1 The quantity and description of any Goods and/or Services shall be as set out in the Company's quotation or acceptance of the Customer's order pursuant to Condition 2.5.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract and this is not a sale by sample.
- 3.3 Any and all Drawings and/or Patterns shall be submitted in such formats and shall meet such standards as may be prescribed by the Company from time to time, at the Company's absolute discretion. The Company reserves the right to refuse to perform any Services or produce any Goods if any Drawings and/or Patterns is not submitted in the format prescribed, or does not meet the standard prescribed, in each case by the Company. Without limitation, if the Company is requested to prepare any Drawings and/or Patterns for a Customer or to assist any Customer in the preparation of any Drawings and/or Patterns, any and all additional charges therefor shall be payable by the Customer. Details of any formats and standards prescribed by the Company for the submission of Drawings and/or Patterns may be obtained by contacting Mr. Stephen Butcher of the Company.
- 3.4 The Customer shall be responsible for transporting any and all Free Issue Materials to the Company's premises, unless otherwise agreed in advance with the Company and the Customer shall, unless otherwise so agreed, also pay any and all costs associated therewith.
- 3.5 All Free Issue Materials must, at the time that they are first provided to the Company, be accompanied by a declaration from the Customer stating (i) the value of the Free Issue Materials; and (ii) any special characteristics of the Free Issue Materials.
- 3.6 All Free Issue Materials are subject to inspection by the Company upon receipt thereby. Any defect in any Free Issue Materials will be notified to the Customer prior to the commencement of performance of any Services, or the production of any Goods, as applicable, and the Company reserves the right to refuse to perform any Services or produce any Goods in relation to any defective Free Issue Materials where any such defect is not remedied prior to any such

commencement of performance, or production, as applicable. Without limitation, if the Company agrees to attempt to remedy the defect or to assist the Customer in so doing, the Customer shall pay any additional charges imposed by the Company therefor.

- 3.7 All Free Issue Materials shall be provided to the Company and released to the Customer at the Customer's sole cost and expense including any additional Free Issue Materials which the Customer may be required to provide to the Company, even if the provision of such additional Free Issue Materials has been occasioned by the fault of the Company.
- 3.8 All Free Issue Materials shall be handled by the Company at the Customer's own risk. The Customer shall be responsible for arranging for a suitable policy of insurance to provide adequate coverage for all Free Issue Materials against all risks which could arise in relation thereto whilst the Free Issue Materials are at the Company's premises (or otherwise under the Company's control), including but not limited to theft, fire and water damage. For the avoidance of doubt, the Company shall not be responsible for anything which may occur whilst the Free Issue Materials are being handled by the Company, including but not limited to any loss or damage which may occur to the Free Issue Materials during the cutting process. Any surplus or waste materials derived from any Free Issue Materials may be disposed of by the Company at the Customer's cost, (if any) unless otherwise agreed with the Company in advance.
- 3.9 The Company reserves the right to charge for the storage of Free Issue Materials at such rate as shall be agreed with the Customer if any Free Issue Materials are held by the Company for more than 30 days, or for such reasonable period as is agreed with the Customer when the Customer's order is accepted by the Company.
- 3.10 The Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by, the Company, in settlement of any claim for infringement of any patent, copyright, design, trade mark or any other intellectual property right of any other person resulting from the Company's use of any Drawings and/or Patterns, Free Issue Materials and/or specification submitted by the Customer.
- 3.11 Without prejudice to Condition 3.1, the Company shall use its reasonable efforts to supply the Goods in accordance with any specification submitted by the Customer and approved by the Company, but may in any event effect modifications to the Goods without the Customer's approval in order to comply with any applicable safety or statutory requirements, or to effect enhancements to the Goods. The Company will notify the Customer in writing of any material modifications to the Goods and the Customer shall be deemed to have accepted such modifications unless notice in writing to the contrary shall be received by the Company within 3 days of the date of the Company's notice to the Customer.
- 3.12 All Goods shall be supplied by the Company to any standard commercial tolerances that apply within the appropriate industry, unless the Customer notifies the Company in its order of any special tolerances that the Customer requires.
- 3.13 Subject to the provisions of Condition 9.2 (b), the Customer shall be solely responsible for ensuring the suitability of any Goods for any specific purpose.

4. DELIVERY AND PERFORMANCE

- 4.1 The Company only delivers within the United Kingdom, unless otherwise agreed between the Customer and the Company's export department, who will advise the Customer regarding any and all terms and conditions and the delivery charges applicable to export orders.
- 4.2 Unless otherwise agreed in writing by the Company, and without prejudice to Condition 4.1, delivery of the Goods shall take place at the Customer's place of business. All carriage charges, including, without limitation, all costs in relation to transport, insurance and unloading, shall be borne by the Customer.
- 4.3 Any dates specified by the Company for delivery of the Goods and/or performance of the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. Should expedited delivery be agreed, the Company reserves the right to levy an extra delivery charge.

- 4.4 The Services supplied under the Contract shall be provided by the Company to the Customer from the date of acceptance by the Company of the Customer's offer in accordance with Condition 2.5, unless otherwise specified by the Company.
- 4.5 Subject to Condition 12, and unless the Company specifies that the Services shall not be provided on a repetitive basis, the Services shall be provided for such fixed period as the Company shall determine in advance and shall continue to be supplied unless the Contract is terminated by one of the parties giving to the other such period of notice as the Company shall determine in advance.
- 4.6 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or performance of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.7 If for any reason the Customer fails to accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
 - (b) the Goods shall be deemed to have been delivered; and
 - (c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance);or
 - (d) sell the Goods at the best price readily obtainable and (after deducting any reasonable costs and expenses in connection with the storage and expedited sale of the Goods), charge the Customer for any shortfall below the price for the Goods.
- 4.8 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 4.9 If delivery involves difficult access to or at the Delivery Point and/or the Delivery Point is located at an unreasonable distance from any feasible vehicular access point, the Company reserves the right to levy an extra delivery charge.
- 4.10 If the Company delivers to the Customer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.11 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.12 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 4.13 Without prejudice to the provisions of Conditions 2.6 or 4.7, the Company reserves the right to charge for the storage of Goods at such rate as shall be agreed with the Customer, if:
- (a) the Customer requests that their order be put on hold; or
 - (b) if any Goods are held by the Company (through no fault of the Company) for any period of time beyond the date nominated by the Company for the delivery of the Goods.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of the Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

6.1 The Goods are at the risk of the Customer from the time of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Company has received payment in full (including any interest or other sums payable) in cash or cleared funds for the Goods and for any other goods or services that the Company has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery and indemnify the Company against all loss or damage of whatsoever nature affecting the Goods;
- (e) notify the Company immediately if it becomes subject to any of the events listed in Conditions 12.1(d) 12.1(j) (inclusive); and
- (f) give the Company such information relating to the Goods as the Company may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Conditions 12.1(d) 12.1(j) (inclusive), or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods and/or Services shall be the price set out in the quotation sent to the Customer and/or confirmed in the Company's acceptance of the Customer's order pursuant to Condition 2.5.

7.2 The price for the Goods and/or Services shall be exclusive of any value added tax. The price of any Goods shall additionally be exclusive of all costs and charges in relation to packaging, loading, unloading, carriage and insurance.

7.3 The Company may review and pass on any increase in the price of the Goods due to unfavourable changes in labour and/or material costs, exchange rates, import duties, surcharges or freight charges.

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

7.5 Without prejudice to Condition 7.3 or 7.4, the Company reserves the right to review and increase the price of any Goods and/or Services at any time before delivery and/or performance.

8. PAYMENT

- 8.1 The price for any Goods and/or Services shall be paid by the Customer to the Company (or to such other party as may be notified to the Customer in writing), as follows:
- 8.1.1 If the Company has agreed monthly credit terms with the Customer, the Company's invoices must be paid within the time period stipulated on the invoice; or
 - 8.1.2 If no credit terms have been agreed, then full payment must be made when the Customer's order is placed.
- 8.2 Time for payment shall be of the essence.
- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds. In the event that the Customer tenders payment by cheque and said cheque is returned unpaid to the Company, the Customer shall reimburse the Company for any bank charges incurred by the Company.
- 8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 8.6 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 5 % above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Customer shall reimburse the Company for any and all costs incurred by the Company in recovering payment pursuant to this Condition 8.
- 8.7 Without prejudice to Condition 8.6, any failure by the Customer to pay the Company any sum by the due date for payment and/or the occurrence of any one or more of the events set forth in Conditions 12.1(d) 12.1(j) (inclusive) shall entitle the Company, at any time and without notice to the Customer and without limitation to any other remedy available to the Company under these Conditions, the Contract, or otherwise:
- 8.7.1 To suspend or cancel the further delivery of any Goods or the performance of any Services, including, without limitation, stopping the delivery of any Goods in transit;
 - 8.7.2 To withdraw or reduce any agreed monthly credit limit; and
 - 8.7.3 To treat the Contract as having been repudiated by the Customer.
- 8.8 The Customer may not cancel any order for Goods and/or Services which the Company has accepted pursuant to Condition 2.5 and if the Customer cancels, or purports to cancel any such order (or the Contract or any part thereof), then the Company may, by notice in writing to the Customer, elect to treat the Contract as repudiated.
- 8.9 For the avoidance of doubt, and notwithstanding the exercise of any remedy by the Company in accordance with Condition 8.7 or 8.8, or under any other of these Conditions, the Contract, or otherwise, the Customer shall remain liable to pay and shall pay the Company at the Contract rate, any and all payments subsisting at the relevant time.

9. WARRANTIES

- 9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.
- 9.2 The Company warrants that (subject to the other provisions of these Conditions):
- (a) on delivery, the Goods shall be free from any defects in materials and workmanship and shall (subject always to the provisions of Condition 3.10) conform to their specification; and
 - (b) if the Customer has made it expressly known to the Company in the Customer's order that the Goods shall be suitable for a particular purpose and the Company has expressly stated in the Company's acceptance of the Customer's order pursuant to Condition 2.5 that it will supply Goods suitable for that purpose, then the Goods shall be reasonably fit for the purpose so stated; and

- (c) any Services will be performed with reasonable skill and care.
- 9.3 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 unless:
 - (a) the Customer gives written notice of any defect to the Company within 3 days of the time when the Customer discovers the defect (within 24 hours, if the defect is a result of damage in transit); and
 - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 9.4 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 if:
 - (a) the Customer makes any further use of any Goods which the Customer has alleged to be defective after giving notice of any such defect; or
 - (b) the Customer alters or repairs the Goods without the prior written consent of the Company; or
 - (c) the defect arises because the Customer failed to follow any oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - (d) the defect arises from any Drawings and/or Patterns, Free Issue Materials and/or any specification submitted by the Customer, or from fair wear and tear, wilful damage, negligence, abnormal working conditions or from any misuse of the Goods; or
 - (e) the full price for the Goods and/or Services has not been paid by the time for payment stipulated in Condition 8.1; or
 - (f) the defect is of a type specifically excluded by the Company by notice in writing.
- 9.5 Subject to Condition 9.3 and Condition 9.4, if any of the Goods and/or Services do not conform with any of the warranties in Condition 9.2:
 - (a) the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company. The Company shall, if it opts to replace the defective Goods, then deliver replacement Goods to the Customer at the Delivery Point (at the Company's expense), and ownership of the defective Goods shall, if it has vested in the Customer, re-vest in the Company; and/or
 - (b) the Company shall re-perform any Services which are proved to the reasonable satisfaction of the Company not to have been performed with reasonable skill and care, or at the Company's option, shall refund any monies already paid by the Customer for any such Services.
- 9.6 If the Company complies with Condition 9.5 it shall have no further liability for a breach of any of the warranties in Condition 9.2 in respect of such Goods.

10. LIMITATION OF LIABILITY

- 10.1 Subject to Condition 4, Condition 5, Condition 9 and Condition 12, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 - (a) any breach of these Conditions;
 - (b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Company:
 - (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or

- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

10.4 Subject to Condition 10.2 and Condition 10.3:

- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- (b) the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. INDEMNITY

The Customer shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made by or against the Company in respect of any liability, loss, damage, injury, cost or expense whatsoever, howsoever and to whomsoever occurring, to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from any act or omission of the Customer or any third party, or from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

12. TERMINATION

12.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- (h) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Conditions 12.1(d) 12.1(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (m) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

12.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of any Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and
- (b) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

12.3 On termination of the Contract (however arising), conditions 7-12 and 16 shall survive and continue in full force and effect.

13. ASSIGNMENT/SUBCONTRACTING

13.1 The Company may assign the Contract or any part of it to any person, firm or company.

13.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13.3 The Company, but not the Customer, shall be entitled to subcontract any or all of its obligations under all or any part of the Contract.

14. FORCE MAJEURE

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

15. GENERAL

15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.2 The Customer and the Company agree that in the course of the Company providing Goods and/or Services to the Customer, the parties may disclose to each other certain Confidential Information. The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written

consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party.

- 15.3 The Customer acknowledges the Company's ownership of any Intellectual Property Rights in any Goods and/or Services provided to the Customer pursuant to the Contract and agrees not to contest the Company's ownership of any such Intellectual Property Rights. Without limitation, the Customer shall not acquire, nor shall the Customer register or attempt or permit to be registered, any such Intellectual Property Rights. The Customer further acknowledges that any and all Intellectual Property Rights developed by the Company in performing any Services or producing any Goods shall become vested and shall vest in the Company absolutely.
- 15.4 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 15.5 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 15.6 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.7 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 15.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

16. COMMUNICATIONS

- 16.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or email:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
 - (b) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 16.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - (b) if delivered by hand, on the day of delivery; or
 - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day; or
 - (d) if sent by email, within 24 hours of sending.
- 16.3 Communications addressed to the Company shall be marked for the attention of Mr. Stephen Butcher.