

# TERMS & CONDITIONS

## 1 INTERPRETATION

- 1.1 In these Conditions the following words have the following meanings:
- **“Acceptance Date”** the date that the Buyer accepts (or is deemed to accept) the Goods in accordance with clause 6 below;
  - **“Acceptance Tests” “First Repeat Acceptance Tests” and “Second Repeat Acceptance Tests”** the acceptance tests to be implemented by the Buyer in accordance with clause 6 below;
  - **“Buyer”** the person(s), firm or company from whom an order to supply Goods is received by the Company;
  - **“Buyer Materials”** any documents or other materials and any data or other information provided by the Buyer relating to the Goods;
  - **“Buyer Requirement”** the written statement prepared by or on behalf of the Buyer and set out in Schedule 2 indicating the business or other application(s) to be computerised and the functional and performance criteria that the Goods must meet;
  - **“Company”** Torquemeters Limited (Company Number 00492122) whose registered office is at West Haddon Road, Ravensthorpe, Northampton, NN6 8ET United Kingdom;
  - **“Company Materials”** any documents or other materials, and any data or other information provided by the Company relating to the Goods;
  - **“Conditions”** the standard terms and conditions of sale as set out in this document;
  - **“Contract”** any contract between the Company and the Buyer for the sale and purchase of the Goods;
  - **“Delivery Point”** the place where delivery of the Goods is to take place under Condition 4.1;
  - **“Detailed Specification”** the written specification of the Goods containing, inter alia, the information set out in Schedule [1] to be prepared by the Company in accordance with clause 3 below;
  - **“Goods”** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them);
  - **“Representative”** either of the representatives to be nominated respectively by the Company and the Buyer and as notified to the other party from time to time.
- 1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 1.4 In these Conditions headings will not affect the construction of these Conditions.

## 2 APPLICATION OF TERMS

- 2.1 Subject to any variation under Condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Company's sales of Goods and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Company.
- 2.4 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until the Company issues a written acknowledgement of order or (if earlier) the Company delivers the Goods to the Buyer.
- 2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, or the term specified in the quotation, provided that the Company has not previously withdrawn it.

## 3 DESCRIPTION

- 3.1 The description of the Goods shall be agreed between the parties and set out in [Schedule 1] (the “Detailed Specification”) Functional Detailed Specification.
- 3.2 Forthwith upon execution of this Agreement the Company shall commence in collaboration with the Buyer the preparation of the Detailed Specification on the basis of the Buyer Requirement and the Buyer shall provide to the Company all information and other documents reasonably requested by the Company for this purpose.
- 3.3 Any dimensions and weights quoted by the Company are approximate only. After the Company's acceptance of a Buyer's order one set of certified drawings will be supplied to the Buyer if requested in writing.
- 3.4 The Company shall use all reasonable endeavours to complete the preparation of the Detailed Specification as soon thereafter as is reasonably possible.
- 3.5 Forthwith upon completion of the Detailed Specification the Company shall submit the same for approval by the Buyer.

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- 3.6 The Buyer shall within 15 days of receipt of the Detailed Specification by notice served upon the Company either approve the same or respond to the Company with such comments and/or requests for amendment as it shall reasonably judge appropriate. If the Buyer fails to approve the Detailed Specification or respond with comments and/or requests for amendment within the said period it shall be deemed to have approved the Detailed Specification.
- 3.7 The Company shall take account of all reasonable comments and/or requests for amendment received from the Buyer pursuant to clause 3.6 above and shall incorporate the same in a revised version of the Detailed Specification to be prepared and delivered to the Buyer as soon as is reasonably possible.
- 3.8 The process described in clauses 3.6 and 3.7 above shall be repeated until such time as the Buyer shall have approved (or shall be deemed to have approved) the Detailed Specification and any delay caused by this process shall be reflected in the proposed delivery date.
- 3.9 The Company and the Buyer agree to use all reasonable endeavours to complete the process of approval of the Detailed Specification as soon as is possible.
- 3.10 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.

## 4 DELIVERY

- 4.1 Unless otherwise agreed in writing by the Company delivery of the Goods shall take place at the Company's place of business.
- 4.2 The Buyer will take delivery of the Goods within [14] days of the Company giving it notice that the Goods are ready for delivery.
- 4.3 Any dates specified by the Company for delivery of the Goods 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 will be within a reasonable time.
- 4.4 Subject to the other provisions of these Conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds [60] days.
- 4.5 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 4.5.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);

- 4.5.2 the Goods will be deemed to have been delivered; and
- 4.5.3 the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

- 4.6 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Goods.
- 4.7 If the Company delivers to the Buyer a quantity of Goods of up to [5]% more or less than the quantity accepted by the Company the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.8 The Company may deliver the Goods by instalments and each instalment shall be treated as a separate Contract so that failure to deliver or defect in one or more instalment shall not entitle the Buyer to reject the other instalments.

## 5 NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon collection by the Buyer from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within [7] 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 TESTING AND ACCEPTANCE

- 6.1 Upon delivery of the Goods (or any quantity of Goods), the Buyer shall inspect and test that the Goods (or the quantity of Goods) to ensure that they are in accordance with the Detailed Specification.
- 6.2 Upon delivery of the Goods the Buyer shall only be entitled to reject the Goods upon the basis that (and by detailing the manner in which) the Goods do not operate in a manner provided for by the Detailed Specification. The Buyer shall be deemed to have approved the Goods if it neither approves nor rejects them within the said 15 days.
- 6.3 The Company shall forthwith upon receipt of a rejection by the Buyer pursuant to clause 6.2 above make all such alterations to the Goods as shall in the circumstances be necessary and shall resubmit the same for approval by the Buyer. The provisions of clause 6.2 above and this clause shall apply mutatis mutandis until such time as the Company shall approve (or be deemed to approve) the Goods.
- 6.4 The Buyer shall accept (and in default shall be deemed to accept) the Goods upon the date that they pass the Acceptance Tests.

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- 6.5 If the Goods fail the Acceptance Tests then the Company shall forthwith implement free of charge such alterations or modifications to the Goods as it shall in the circumstances reasonably judge necessary and in sufficient time to make possible the repetition of the Acceptance Tests by the Buyer in the presence of the Company's Representative within 30 days of the date of failure (the "First Repeat Acceptance Tests").
- 6.6 If the Goods fail the First Repeat Acceptance Tests then the Buyer may at its option:
- 6.6.1 require the Company by written notice forthwith to implement such further alterations or modifications to the Goods free of charge as the Company shall reasonably judge necessary to enable the Goods to pass repeat Acceptance Tests (the "Second Repeat Acceptance Tests"). The Second Repeat Acceptance Tests shall be carried out by the Buyer in the presence of the Company's Representative. If the Company shall not have completed such alterations or modifications to the Goods by the 30 day after the First Repeat Acceptance Tests or if the Goods shall fail the Second Repeat Acceptance Tests then the Buyer shall be entitled to proceed at its option under either 6.6.2 or 6.6.3 below; or
- 6.6.2 accept the Goods subject to such refund of the price levied by the Company pursuant to clause 8 below as the Company and the Buyer shall agree. If the parties fail to agree such refund within 60 days of failure of the First Repeat Acceptance Tests or Second Repeat Acceptance Tests pursuant to clause 6.6.1 then the Buyer at its option shall be entitled either to refer the matter for settlement in accordance with the disputes procedure set out in clause 13 below or to proceed under clause 6.6.3 below; or
- 6.6.3 reject the Goods and without prejudice to any other rights or remedies to which the Buyer may be entitled to hereunder or at law terminate this Agreement.
- 6.7 The Company (through its Representatives) shall provide the Buyer with all such assistance and advice as it shall from time to time reasonably require in the process of testing the Goods pursuant to this clause 6.
- 7 RISK/TITLE**
- 7.1 The Goods are at the risk of the Buyer from the time of delivery.
- 7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 7.2.1 the Goods; and
- 7.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 7.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 7.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 7.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
- 7.3.5 hold the proceeds of the insurance referred to in Condition 7.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 7.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 7.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 7.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 7.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- 7.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 7.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/performs any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 7.5.3 the Buyer encumbers or in any way charges any of the Goods.
- 7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

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7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

## 8 PRICE

8.1 Unless otherwise agreed by the Company in writing the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.

8.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

## 9 PAYMENT

9.1 Payment of the price for the Goods is due and payable 30 days from the date of the invoice.

9.2 Time for payment shall be of the essence.

9.3 No payment shall be deemed to have been received until the Company has received cleared funds.

9.4 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.

9.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

9.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of [4]% above the base lending rate from time to time of [Barclays Bank Plc] on a daily basis until payment is made, whether before or after any judgment.

9.7 The Company reserves the right to claim interest and fixed sum compensation under the Late Payment of Commercial Debts (Interest) Act 1998.

## 10 QUALITY

10.1 Where the Company is not the manufacturer of the Goods, the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

10.2 The Company warrants that (subject to the other provisions of these Conditions) upon delivery, and for a period of 12 months from the date of delivery, the Goods will:

10.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1994;

10.2.2 be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has

confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company.

10.3 The Company shall not be liable for a breach of any of the warranties in Condition 10.2 unless:

10.3.1 the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier; within 60 days of the time when the Buyer discovers or ought to have discovered the defect; and

10.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods either at the Buyer's place of business or requesting the Buyer return such Goods to the Company's place of business at the [Company's] expense for the examination to take place there.

10.4 The Company shall not be liable for a breach of any of the warranties in Condition 10.2 if:

10.4.1 the Buyer makes any further use of such Goods after giving such notice; or

10.4.2 the defect arises because the Buyer failed to follow the Company's 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

10.4.3 the Buyer alters or repairs such Goods without the written consent of the Company.

10.5 Subject to Conditions 10.3 and 10.4, if any of the Goods do not conform with any of the warranties in Condition 10.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the [Company's] expense, return the Goods or the part of such Goods which is defective to the Company.

10.6 If the Company complies with Condition 10.5 it shall have no further liability for a breach of any of the warranties in Condition 10.2 in respect of such Goods.

10.7 Any Goods replaced will belong to the Company and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the 12 month period.

## 11 LIMITATION OF LIABILITY

11.1 Subject to Condition 10, the following provisions of this Condition 11 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 Buyer in respect of:

11.1.1 any breach of these Conditions; and

11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the

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Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation. (The Buyer's attention is drawn to the provisions of Condition 11.4 below)

11.4 Subject to Conditions 11.2 and 11.3:

11.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to £5,000,000; and

11.4.2 the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 12 INTELLECTUAL PROPERTY

12.1 The copyright and all other intellectual property rights and confidential information in the Detailed Specification and the Goods shall vest in the Company.

12.2 Subject to 12.1 the property and any copyright or other intellectual property rights in:-

12.2.1 any Buyer Materials shall belong to the Buyer;

12.2.2 any Company Materials shall, unless otherwise agreed in writing between the Buyer and the Company, belong to the Company, subject only to a licence in favour of the Buyer to use the Company Materials for the purposes of receiving the Goods.

12.3 The Company endeavours not to offer for sale Goods which infringe known or valid patent trademarks copyright or registered designs but shall not be liable to the Buyer for any damage or loss of profit arising from infringement of any patent trademark copyright or registered design or from any proceedings or threatened proceedings in respect of any infringement.

12.4 Where goods are manufactured in accordance with plans or specifications provided by the Buyer, the Buyer warrants that the use of such plans and specifications does not infringe any patent trademarks copyright or registered design and will indemnify the Company against all costs claims demands or expenses incurred or brought against the Company in connection therewith.

12.5 The copyright in any plans drawings and software comprising part of the Goods shall remain vested in the Company and the Buyer's rights in the same shall be limited to its own sole use exclusively for the purpose for which they were made available.

## 13 DISPUTES

13.1 All disputes or differences which shall at any time hereafter

arise between the Company and the Buyer in respect of the construction or effect of this Agreement or the rights duties and liabilities of the parties hereunder or any matter or event connected with or arising out of this Agreement (a "Relevant Event") shall be referred to such independent third party (the "Third Party") as the Company and the Buyer shall jointly nominate.

13.2 If the Company and the Buyer shall fail to nominate a Third Party within 14 days of the date of occurrence of the Relevant Event then the Third Party shall be nominated at the request of either the Company or the Buyer by the President for the time being of the Institute of Electrical Engineers.

13.3 The Third Party (whether appointed under clause 13.1 or 13.2 above) shall act as an expert and not as an arbitrator whose decision (including as to costs) shall except in the case of manifest error be final and binding upon the Company and the Buyer.

## 14 ASSIGNMENT

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

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

## 15 FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) 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, 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 [60] days, either party shall be entitled to give not less than [14] days notice in writing to the other party to terminate the Contract.

## 16 GENERAL

16.1 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.

16.2 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.

16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.



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16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

16.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

16.6 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.

## 17 NOTICES

17.1 All notices between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

17.1.1 (in case of notices to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

(17.1.2 in the case of the notices to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.

17.2 Notices shall be deemed to have been received:

17.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays within the UK) after posting (exclusive of the day of posting);

17.2.2 if delivered by hand, on the day of delivery;

17.2.3 if sent by facsimile transmission on a working day prior to 4.00 p.m., at the time of transmission and otherwise on the next working day.

Notices addressed to the Company shall be marked for the attention of a Company Director.

## Standard Terms and Conditions for the Purchase of Goods

### 1 INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

**“Company”** Torquemeters Limited (Company Number 00492122) whose registered office is at West Haddon Road, Ravensthorpe, Northampton, NN6 8ET United Kingdom;

**“Conditions”** the standard terms and conditions of purchase as set out in this document;

**“Contract”** the Order and the Seller's acceptance of the Order;

**“Goods”** any goods agreed in the Contract to be purchased by the Company from the Seller (including any part or parts of them);

**“Order”** the Company's written instruction, incorporating these conditions, to supply the Goods;

**“Seller”** the person(s), firm or company who accepts the Order; and

**“Specification”** includes any plans, patterns, drawings, data or other information relating to the Goods.

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

### 2 APPLICATION OF TERMS

2.1 These Conditions are the only conditions upon which the Company is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Goods by the Company from the Seller shall be deemed to be an offer by the Company to purchase Goods subject to these Conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order; in whole or in part accepts the offer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document will form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.4 These Conditions apply to all the Company's purchases and/or acquisitions and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by Director of the Company.

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2.5 The Order will lapse unless unconditionally accepted by the Seller in writing within 15 days of its date.

## 3 QUALITY AND DEFECTS

- 3.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and Specification supplied or advised by the Company to the Seller.
- 3.2 The Company's rights under these Conditions are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979.
- 3.3 At any time prior to delivery of the Goods to the Company the Company shall have the right, at all times, to inspect and test the Goods and the Seller shall provide the Company with all facilities reasonably required for such inspection and testing.
- 3.4 If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to the Specification supplied or advised by the Company to the Seller, the Company shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.
- 3.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.
- 3.6 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.
- 3.7 The Goods shall be marked in accordance with the Company's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.
- 3.8 If any of the Goods fail to comply with the provisions set out in Condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in Condition 12.

## 4 INDEMNITY

- 4.1 The Seller shall keep the Company indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), 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:
- 4.1.1 defective workmanship, design, quality or materials;
- 4.1.2 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods;

4.1.3 any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a direct consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

## 5 DELIVERY

- 5.1 The Goods shall be delivered, carriage paid to the Company's place of business or to such other place of delivery as is agreed by the Company in writing prior to delivery of the Goods. The Seller shall off-load the Goods as directed by the Company.
- 5.2 The Seller shall supply the Company in good time with any instructions or other information required to enable the Company to accept delivery of the Goods.
- 5.3 The date for delivery shall be specified in the Order and/or if no such date is specified then delivery shall take place within 21 days of the date of the Order.
- 5.4 The Seller shall invoice the Company upon, but separately from, despatch of the Goods to the Company.
- 5.5 The Seller shall ensure that each delivery is accompanied by a prominently displayed delivery note which shows, inter alia, the order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 5.6 Time for delivery of the Goods shall be of the essence of the Contract.
- 5.7 Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company within its usual business hours.
- 5.8 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
- 5.8.1 cancel the Contract in whole or in part;
- 5.8.2 refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
- 5.8.3 recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier;
- 5.8.4 claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Goods on the due date; and
- 5.8.5 deduct from the price or (if the Company has paid the price) to claim from the Seller by way of liquidated damages for delay 1.5 per cent of the price for every week's delay, up to a maximum of 15 per cent.

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5.9 The Company shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Company.

5.10 Where the Company agrees in writing to accept delivery by instalments the Contract will be construed as a single contract in respect of each instalment. Nevertheless, failure by the Seller to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.

5.11 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess will be and will remain at the Seller's risk and will be returnable at the Seller's expense.

5.12 The Company may reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Company has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

## 6 RISK/PROPERTY

The Goods shall remain at the risk of the Seller until delivery to the Company is complete (including off-loading and stacking) when ownership of the Goods shall pass to the Company.

## 7 PRICE

7.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax (which shall be payable by the Company subject to receipt of a VAT invoice) but inclusive of all other charges.

7.2 Neither variation in the price nor extra charges will be accepted by the Company.

## 8 PAYMENT

8.1 The Company shall pay the price of the Goods within 30 days after the end of the month of receipt by the Company of a valid invoice or, if later, after acceptance of the Goods in question by the Company but time for payment shall not be of the essence of the Contract.

8.2 Each invoice issued by the Seller shall quote the number of the Order to which it relates.

8.3 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract.

8.4 The Company shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown in the Seller's own terms of sale.

## 9 CONFIDENTIALITY

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been

disclosed to the Seller by the Company or its agents and any other confidential information concerning the Company's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

## 10 THE COMPANY'S PROPERTY

Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, Specifications and data supplied by the Company to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Company but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.

## 11 TERMINATION

11.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

11.2 The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

11.2.1 the Seller commits a breach of any of the terms and conditions of the Contract;

11.2.2 any distress, execution or other process is levied upon any of the assets of the Seller;

11.2.3 the Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or



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11.2.4 the Seller suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Seller; or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Seller ceases to trade;

11.2.5 the Seller ceases or threatens to cease to carry on its business; or

11.2.6 the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

11.3 The termination of the Contract, however arising, will be without prejudice to the rights and duties of the Company accrued prior to termination. The Conditions that expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## 12 REMEDIES

12.1 Without prejudice to any other right or remedy which the Company may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of this Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Company:

12.1.1 to rescind the Order;

12.1.2 to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;

12.1.3 at the Company's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

12.1.4 to refuse to accept any further deliveries of the Goods but without having any liability to the Seller;

12.1.5 to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and

12.1.6 to claim such damages as may have been sustained in consequence of the Seller's breaches of the Contract.

## 13 ASSIGNMENT

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

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

## 14 FORCE MAJEURE

The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered 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, 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 [60] days, the Company shall be entitled to give not less than [7] days notice in writing to the Seller to terminate the Contract.

## 15 NOTICES

15.1 All notices between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

15.1.1 (in case of notices to the Company) to its registered office or such changed address as shall be notified to the Seller by the Company; or

15.1.2 (in the case of the notices to the Seller) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Seller set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Seller.

15.2 Notices shall be deemed to have been received:

15.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays within the UK) after posting (exclusive of the day of posting);

15.2.2 if delivered by hand, on the day of delivery;

15.2.3 if sent by facsimile transmission on a working day prior to 16:00, at the time of transmission and otherwise on the next working day.

Notices addressed to the Company shall be marked for the attention of a Company Director.

## 16 GENERAL

16.1 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.

16.2 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.

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- 16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Seller will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 16.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.6 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.