

## **Terms and conditions of sale**

### **1 INTERPRETATION**

1.1 In these conditions:

**'Company'** means Herga Technology Limited, Northern Way, Bury St Edmunds, Suffolk, IP32 6NN.

**'Conditions'** means the standard conditions of sale set out in this document and includes any Special Conditions annexed hereto;

**'Contract'** means the contract for the sale and purchase of the Goods;

**'Goods'** means all or any products (including any instalment of the Goods or any part of them) which the Company is to supply in accordance with these Conditions;

**'Intellectual Property'** means all inventions, patents, utility models, design (both registered or unregistered and including rights relating to semi-conductor topographies), database rights, copyright and trade marks (both registered and unregistered), together with all rights to the grant of and applications for the same and including all similar or analogous rights and all other rights in the nature of intellectual and industrial property throughout the world and all future rights of such nature;

**'Order Acknowledgement'** means the acknowledgement of an order in Writing issued by the Company pursuant to Condition 2.2.1;

**'Purchaser'** means the person whose order for the Goods is accepted by the Company;

**'Special Order'** means any order for the Goods in respect of which the Company notifies the Purchaser, by endorsement of an Order Acknowledgement or otherwise, that the Goods shall be supplied as a Special Order;

**'Writing'** includes facsimile transmission, e-mail, edi, and other comparable means of communication.

1.2 Any references in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 Words denoting the singular number only, include the plural and vice versa.

1.4 The headings used in these Conditions are for convenience only and shall not affect the construction thereof.

### **2 BASIS OF SALE**

2.1 The Conditions shall:

2.1.1 apply to and be incorporated into the Contract; and

2.1.2 prevail and take precedence over any terms or conditions (even when such terms or conditions are themselves expressed to prevail) contained, or referred to, in the Purchaser's purchase order, confirmation of order, acceptance of a quotation or specification, or any inconsistent terms or conditions implied by law, trade custom, practice or course of dealing.

2.2 The Purchaser's purchase order, or the Purchaser's acceptance of a quotation for Goods by the Company, constitutes an offer by the Purchaser to purchase the goods specified in it on the Conditions. No offer placed by the Purchaser shall be accepted by the Company other than:

2.2.1 by an Order Acknowledgement issued and executed by the Company; or

2.2.2 (if earlier) by the Company providing the Goods, when the Contract will be established. The Purchaser's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern the supply of the Goods.

2.3 Quotations are given by the Company on the basis that no agreement shall come into existence except in accordance with Condition 2.2. Any quotation is valid for a period of 30 days from its date (unless stated differently in the quotation), provided that the Company has not previously withdrawn it.

2.4 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Purchaser and a director of the Company.

2.5 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in Writing. In entering into the Contract the Purchaser acknowledges that it does not rely on any representations which are not so confirmed.

2.6 Any advice or recommendation given by the Company or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Purchaser's own risk, and accordingly the Purchaser acknowledges that it does not rely on and waives any claim for claim for breach of any such representation which is not so confirmed.

2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

### **3. ORDERS AND SPECIFICATIONS**

3.1 These Conditions shall apply to any quotation or order relating to the design, manufacture and/or supply of any Goods by the Company and to any Contract arising therefrom.

3.2 The Purchaser shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification or design) submitted by the Purchaser, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its obligations.

3.3 The quantity and description of the Goods to be supplied shall be those set out in the Company's Order Acknowledgement sent pursuant to Condition 2.2 hereof.

3.4 The Company reserves the right (but not so as to be obliged to do so) to make any changes in the quality or specification of the Goods which are required to conform with any applicable UK or EC safety or statutory requirement or which do not materially impair the quality or performance of the Goods.

### **4. ALTERATIONS AND MODIFICATION**

4.1 Where the Purchaser instructs the Company to make some alteration or modification to the Goods, the Company will accept such instructions and use reasonable endeavours to carry the same out but on the following conditions:

4.1.1 The Company in following such instructions is deemed to have made no representation and gives no warranty as to whether the Goods can be altered or modified in accordance with the Purchaser's instructions;

4.1.2 The Goods that are altered or modified pursuant to the Purchaser's instructions are excluded from the warranties given by the Company pursuant to these conditions and in respect of such Goods, the Company shall be under no liability to the Purchaser whatsoever.

4.1.3 The Company shall be under no liability to the Purchaser in respect of such alterations or modifications and the same shall be carried out entirely at the risk of the Purchaser;

4.1.4 Notwithstanding the fact that the Goods may prove to be defective following the alterations and modifications being carried out thereto, the Purchaser shall pay for the Goods pursuant to these conditions; and

4.1.5 The Company shall be under no liability to the Purchaser in respect of the Goods if following the alterations or modifications being made to them, the Goods are not fit for the purpose the Purchaser intended to put the Goods to.

## 5. PRICES

5.1 The price of the Goods shall be those quoted by the Company from time to time or where no price has been quoted, as listed in the Company's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Company's published export price list shall apply. Where the Company is engaged in designing or manufacturing the Goods, the Company may increase the price to reflect the cost to it of designing and/or manufacturing the Goods.

5.2 All prices contained in quotations, Order Acknowledgements or elsewhere are subject to revision.

5.3 Where the Goods (or part thereof) have been imported by the Company the price stated in a quotation or Order Acknowledgement represents the UK sterling price based upon the rate of exchange between UK sterling and the relevant foreign currency applicable to the date of the quotation or Order Acknowledgement. At the time of invoicing a currency/exchange rate correction factor will be applied (if necessary) to the quoted or acknowledged price to take account of any change in the relevant exchange rate between the date of quotation or Order Acknowledgement and the date of the dispatch of the Goods to the Purchaser.

5.4 Save as provided in Conditions 5.1 and 5.2 all prices quoted unless otherwise provided are valid for thirty days only or until earlier acceptance by the Purchaser. The Company reserves the right, by giving notice to the Purchaser at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to:

5.4.1 any change in delivery dates, quantities or specifications for the Goods which is requested by the Purchaser, or any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Company adequate information or instructions.

5.4.2 any factor beyond the control of the Company (including but without limitation any foreign exchange fluctuations, currency regulations, increase or imposition of taxes or duties, increase in the cost of labour and materials or other costs of manufacture), any change in the delivery dates, quantities or specifications for the Goods which is requested by the Purchaser, or any delay caused by failure of the Purchaser to give the Company correct or adequate information and instructions.

5.5 Prices are exclusive of any applicable value added tax, or any other sales tax, or duty or import or export duty, or brokers fees or clearance fees which may be chargeable (whether or not required to be paid to enable the Goods to be shipped from one country to another) which the Purchaser shall be additionally liable to pay to the Company.

5.6 Except as otherwise stated in the Order Acknowledgement or in any price list of the Company, and unless otherwise agreed in Writing between the Purchaser and the Company all prices given by the Company are on an ex works basis. Where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Purchaser shall be liable to pay the Company's charges for transport, packaging and insurance. Where carriage, insurance, storage or other charges are incurred by the Company (including any charges levied by the Company for 'inspection certificates', storage at the Company's own premises and/or handling charges in consequence of any act or omission of the Purchaser, its servants or agents or as a result of any special requirements or stipulations of the Purchaser not otherwise provided for in the Contract) are charged separately from the price, they shall be payable by the Purchaser as if they form part of the price.

5.7 In the event of the Purchaser varying any agreed call-off rate, the Company reserves the right to charge a price appropriate to the changed call-off rate.

## **6. PAYMENT**

6.1 Subject to any special terms agreed in Writing between the Purchaser and the Company, the Company shall invoice the Purchaser for the price of the Goods on or at any time after the Goods have been dispatched for delivery to the Purchaser.

6.2 The Purchaser shall pay the price of the Goods (less any discount to which the Purchaser is entitled, but without any other deduction or set off) within 30 days of the date of the Company's invoice ("the due date") unless otherwise agreed in writing by the Company notwithstanding that delivery of the Goods may not have taken place and the property in the Goods has not passed to the Purchaser. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

6.3 Goods are not supplied on credit terms unless such terms have previously been agreed in Writing by the Company. The Company reserves the right to withdraw any such credit terms at any time.

6.4 If the Purchaser fails to make full payment (including any Value Added Tax payable) by the due date all of the Company's invoice rendered (or to be rendered) to the Purchaser (whether in respect of the Contract or any other contract between the Company and the Purchaser) shall become immediately due and payable to the Company and without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

6.4.1 cancel the Contract or suspend any further deliveries to the Purchaser;

6.4.2 appropriate any payment made by the Purchaser to such of the Goods (or the goods supplied under any other contract between the Purchaser and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Purchaser); and

6.4.3 charge the Purchaser interest (both before and after any judgment) on the amount unpaid, at the rate of 4% per cent above the base lending rate of Barclays Bank plc as varied from time to time, until payment in full is made.

6.5 All costs and expenses reasonably incurred by the Company in recovering monies due to it will be charged to and be payable by the Purchaser.

## **7. DELIVERY**

7.1 Delivery of the Goods shall be on an ex works basis and shall be made by the Company dispatching the Goods for delivery to the Purchaser at the delivery address notified to the Company in the Order Acknowledgement.

7.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in Writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Purchaser.

7.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Purchaser in respect of any one or more instalments shall not entitle the Purchaser to treat the Contract as a whole as repudiated.

7.4 If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the company's reasonable control or the Purchaser's fault, and the Company is accordingly liable to the Purchaser, the Company's liability for any loss, damage or expense incurred or suffered by the Purchaser shall be limited to the price of the Goods not delivered.

7.5 If the Purchaser fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Purchaser's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:

7.5.1 store the Goods (at the risk of the Purchaser) until actual delivery and charge the Purchaser for the reasonable costs (including insurance) of storage; or

7.5.2 terminate the Contract with immediate effect and resell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the Contract or charge the Purchaser for any shortfall below the price under the Contract.

7.6 Where the Company arranges carriage and/or insurance of the Goods for transit to the Purchaser the Company shall be deemed to be acting solely as agent of the Purchaser and Sections 32(2) & (3) of the Sale of Goods Act 1979 shall not apply; and where the Goods are exported the Purchaser shall be responsible for complying with any legislation or regulations governing the importation of Goods into the country of destination and for the payment of any duties. If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the Goods by the Purchaser, the Purchaser shall obtain it at its own expense and if required by the Company produce evidence on demand that it has done so. Failure to obtain it shall not entitle the Purchaser to withhold or delay payment of the price. Any additional expenses or charges incurred by the Company resulting from such failure shall be for the Purchaser's account.

7.7 In any case where goods are sold CIF or FOB or on the basis of other international trade terms the meaning of any such term contained in Incoterms as in force at the date when the Contract is made shall apply except where inconsistent with any of the provisions contained in the Conditions. Incoterms means the international rules for the interpretation of trade terms published by the International Chamber of Commerce.

7.8 Call-off orders must be completed within one year from the date of the first delivery. Only in exceptional circumstances will the Company agree to delay delivery of an order beyond the date agreed in the Order Acknowledgement. The Company shall have sole discretion in determining whether exceptional circumstances exist and whether to agree to delay delivery and reserves the right to pass on to the Purchaser any extra costs involved.

7.9 Unless otherwise agreed in Writing the Company reserves the right to deliver up to 2% more or less than the total number of items stated in the Purchaser's order and such delivery shall satisfy the said order subject to an appropriate adjustment by the Company to the price payable for the Goods.

7.10 Any claim by the Purchaser in respect of any alleged short delivery or discrepancy in delivery must be notified to the Company by notice in Writing by the Purchaser within 7 days of the receipt of the Goods. The Company will not accept any claim in respect of any alleged discrepancy after this time.

## **8. RISK AND TITLE**

8.1 Risk of damage to or loss of the Goods shall pass to the Purchaser at the time of dispatch from the Company's premises. (This Condition shall apply where the sale is made CIF or any delivery point in between).

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other Condition, property in the Goods shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Purchaser for which payment is then due.

8.3 Until such time as property in the Goods passes to the Purchaser, the Purchaser shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Company's property and shall not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods.

8.4 Notwithstanding that the Goods remain the property of the Company the Purchaser shall be entitled to resell the Goods in the ordinary course of the Purchaser's business at full market value for the account of the Purchaser. Until property in the Goods passes from the Company the entire proceeds of sale or any insurance proceeds payable in respect of the Goods shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money.

8.5 The Purchaser's right to use the Goods shall automatically cease if a receiver manager or administrator is appointed over the assets undertaking or property of the Purchaser or a winding up or Administration Order is made or petitioned against the Purchaser.

8.6 The Company shall be entitled to recover the invoiced price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Company.

8.7 Until such time as the Property in the Goods passes to the Purchaser the Company shall be entitled at any time to require the Purchaser to deliver up the Goods to the Company and, if the Purchaser fails to do so forthwith, the Company shall be entitled upon reasonable notice to enter upon any premises of the Purchaser where the Goods are stored and repossess the Goods. In the event that the Goods are in the possession of a third party, the Purchaser shall use its best endeavours to procure the consent and cooperation of such third party to facilitate repossession of the Goods by the Company.

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

## **9. RETURNS**

9.1 Where the Company accepts that it has supplied the wrong Goods (but not otherwise), the Company will issue a return number with which the Purchaser shall identify the relevant Goods prior to returning them to the Company. The Company will refund all reasonable costs incurred by the Purchaser in returning the Goods. In all other cases, returned Goods shall only be accepted by the Company by prior agreement and then only if return carriage is pre-paid by the Purchaser.

## **10. CATALOGUE DESCRIPTIONS**

10.1 Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, price lists and its other literature, these documents are for the Purchaser's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

## **11. INTELLECTUAL PROPERTY**

11.1 The Intellectual Property in the specification(s) and design(s) of the Goods shall belong to and remain the property of the Company.

11.2 While the Company is not aware that any of the Goods sold under these Conditions and/or the use thereof for their normal purpose infringes the Intellectual Property rights of third parties in the United Kingdom or elsewhere, no warranty is given and no obligation or liability is accepted by the Company for any such infringement or any loss, damage or expense associated thereto.

11.3 Where any designs or specifications have been supplied by the Purchaser for manufacture or to the order of the Company then the Purchaser warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party and shall indemnify the Company against all loss, damage, costs and expenses awarded against or incurred by the Company in connection with any claims that the Goods infringe the Intellectual Property of a third party.

## **12. WARRANTY AND GENERAL LIABILITIES**

12.1 Subject as otherwise stated herein, the Company warrants that the Goods are free from significant defect in workmanship and materials at the date of delivery and for the period of 12 months thereafter. Where the Goods are not of the Company's manufacture, the warranty period and its terms shall be limited to such warranty as the Company receives from the manufacturer(s) of the Goods and the Company shall endeavour to transfer to the Purchaser the benefit of any warranty or guarantee given to the Company.

12.2 The Company's warranty shall be limited as follows:

12.2.1 the Company's liability under the warranty shall be limited to the supply of labour and materials to repair any defects in the Goods, or at the Company's option, to replace the defective Goods. The Company shall apply the said labour and materials free of charge, save for transport costs, travelling time and engineer expenses, and

12.2.2 the Company shall have no liability in respect of any defect arising from (a) any drawing, design, or specification supplied by the Purchaser or (b) fair wear and tear, wilful damage, negligence, failure by the Purchaser (or the Purchaser's customer) to follow the Company's instructions (whether written or verbal) as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice, misuse (including use of the Goods for purposes inconsistent with the specifications, (express or implied)), alteration, repair or incorporation of the Goods into another product without the Company's prior approval in Writing, and

12.2.3 the Company shall have no liability if the total price payable for the Goods has not been paid by the Purchaser by the due date.

12.3 The Company's warranty is conditional upon the following:

12.3.1 notice of the defect must be delivered to the Company in Writing within 7 days of the date of delivery or where the defect was not apparent upon reasonable inspection on delivery, within 7 days of the discovery of the defect: and

12.3.2. where the defect is discovered (and notified to the Company) within 7 days of the date of delivery, the Purchaser must give the Company a reasonable opportunity to arrange for inspection of the Goods in the condition and location in which they were delivered, or

12.3.3 where the defect is discovered at a later date, the Goods in question (a) must have been properly stored and/or operated by the Purchaser prior to the defect occurring, (b) must not have been subjected to abnormal use or any modification prior to the defect occurring, and (c) the Purchaser (at its expense) must return the Goods in question for inspection by the Company should the Company so request.

12.4 The Company's warranty will be void and the Company will not have any liability to the Purchaser where the provisions of Condition 12.3 have not been complied with in full by the Purchaser.

12.5 The Goods are sold on the basis that the Purchaser does not deal as a consumer (within the meaning of the Unfair Contract Terms Act 1977) and that the Purchaser has satisfied itself as to the suitability of the Goods for use or resale by the Purchaser in accordance with the Purchaser's specialised knowledge and skill. In particular the Company expressly disclaims all warranties that use of the Goods or any part thereof will result in any economic advantage, increase in profits or reduction in costs.

12.6 Nothing in the Contract shall limit the liability of the Company to the Purchaser for death or personal injury resulting from its negligence (as defined in the Unfair Contract Terms Act 1977), for fraudulent misrepresentation, for breach of the Company's obligations arising from Section 12 of the Sale of Goods Act 1979 or for any liability which cannot be excluded by law.

12.7 Subject to Condition 12.6 and the limitations in Condition 12.2, the following provisions set out in the limitations on the liability of the Company (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Purchaser with respect to:

12.7.1 any breach of its contractual obligations arising under the Contract;

12.7.2 any use made or resale by the Purchaser of any of the Goods, or of any product incorporating any of the Goods; and

12.7.3 any representation, statement, act or omission given, made or carried out under or in connection with the Contract (whether such liability arises in contract, tort, negligence, misrepresentation, breach of statutory duty or otherwise howsoever).

12.8 Except as expressly set forth in the Contract, all conditions, warranties and representations expressed or implied by statute, common law or otherwise with respect to the Goods are excluded to the fullest extent permitted by law and in no event shall the Company be liable for any negligence or tortious loss or for any of the following losses or damage (where such losses or damage were foreseen, foreseeable, known or otherwise and whether or not the Company is advised of the possibility of loss, liability, damage or expense):

12.8.1 loss of revenue;

12.8.2 loss of actual or anticipated profit (including loss of profits on contracts);

12.8.3 loss of the use of money;

12.8.4 loss of anticipated savings;

12.8.5 loss of business;

12.8.6 loss of operating time or loss of use;

12.8.7 loss of opportunity;

12.8.8 loss of goodwill;

12.8.9 loss of reputation;

12.8.10 loss of, damage to or corruption of data; or

12.8.11 any direct or consequential loss or damage howsoever caused (including, for the avoidance of doubt, where such loss or damage is of the type specified in Conditions 12.8.1 – 12.8.10).

12.9 Except as stated in Condition 12.6, the aggregate liability of the Company to the Purchaser with respect to all claims under or in connection with the Agreement shall be limited to the price of the Goods which gave rise to liability.

12.10 The Company shall not be liable to the Purchaser in any way whatsoever or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control.

12.11 Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; and/or power failure or breakdown in machinery.

12.12 In circumstances such as those in Condition 12.11, delivery shall be suspended. The Company shall be entitled to cancel or rescind the Contract and shall not be liable for any loss or damage as a result of such cancellation or rescission. If the Goods cannot be delivered or collected within three months from the original delivery date, the Purchaser may, at its option, cancel the contract for the Goods (without liability to the Company), save that where the Goods have been specially obtained for the Purchaser and in the Company's reasonable opinion there is no readily available market for them, the Purchaser may not cancel the order and shall remain liable to pay the Company for the full purchase price for the Goods.

### **13.HEALTH AND SAFETY AT WORK**

The Purchaser shall be solely responsible for and shall indemnify and keep indemnified the Company against any loss, liability or expense arising directly or indirectly from use of the Goods other than in accordance with the uses to which a competent engineer would put goods of that description and specification or which may be contained in literature supplied by the Company. It is a condition of any order that any information which may have been supplied by the Company about the use for which goods are designed and have been tested about the results of any relevant tests and about conditions necessary to ensure that goods will be safe and without risk to health when properly used are publicised or displayed by the Purchaser to those persons who will use the Goods.

### **14.USE OF GOODS IN LIFE SUPPORT, NUCLEAR AND CERTAIN OTHER APPLICATIONS**

Goods sold by the Company are not designed, intended or authorised for use in life support, life sustaining, nuclear, or other applications in which the failure of such Goods could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If the Purchaser uses or sells the Goods for use in any such applications: (1) the Purchaser acknowledges that such use or sale is at the Purchaser's sole risk; (2) the Purchaser agrees that the Company and the manufacturer of the Goods are not liable, in whole or in part, for any claim or damage arising from such use; and (3) the Purchaser agrees to indemnify, defend and hold the Company harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.

### **15.EXPORT CONTROL**

The sale, resale or other disposition of certain Goods and related technologies or documentation may be subject to the export control laws, regulations and orders of the United Kingdom and may also be subject to the export and/or import control laws and regulations of other countries. The Purchaser agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any Goods to any country to which such export or transmission is restricted or prohibited. The Purchaser acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

## **16. CONFIDENTIALITY UNDERTAKING AND BRIBERY ACT**

16.1 The Purchaser undertakes that during the term of the Contract and thereafter it will keep confidential and will not use for its own purpose nor without the written consent of the Company disclose to any third party any information of a confidential nature regarding the Company and the Goods (including trade secrets and information of commercial value) unless such information is public knowledge.

16.2 The Purchaser undertakes to comply with applicable Bribery Laws (meaning the Bribery Act 2010 and all other applicable UK legislation, regulations and codes in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction), including ensuring that it has in place adequate procedures to ensure compliance with the Bribery Laws and prevent bribery and shall use all reasonable endeavours to ensure that:

16.2.1. all of its personnel

16.2.2 all others associated with it, and

16.2.3 all of its subcontractors.

involved with this Agreement so comply. The expressions 'adequate procedures' and 'associated' shall be construed in accordance with the Bribery Act 2010 and documents published under it.

16.3 Without limitation to the above sub-clause, the Purchaser shall not make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

## **17. ASSIGNMENT**

The order or any right or rights of the Purchaser hereunder may not be assigned in whole or in part without the prior consent of the Company in Writing.

## **18. SUB-CONTRACTS**

The Company reserves the right to sub-contract the performance of the Contract or any part thereof.

## **19.. TERMINATION**

19.1 If:

19.1.1 the Purchaser commits any breach of any of the Conditions (including without limitation Conditions as to the time for payment of the purchase price) or of any other contract with the Company (save where the breach is capable of remedy and the Purchaser has remedied the same within 7 days of receiving notice in Writing from the Company requiring the same to be remedied); or

19.1.2 if the Purchaser is dissolved or struck off the register of companies or a winding up order is made against the Purchaser or a meeting is convened, resolution passed or any step taken by the Purchaser with a view to the winding-up of the Purchaser except for the purpose of a solvent reconstruction, reorganisation, merger or consolidation;

19.1.3 if a receiver (including fixed charge or court appointed), administrative receiver, manager, insolvency practitioner or similar officer shall be appointed over the whole or a substantial part of the undertaking, property or assets of the Purchaser;

19.1.4 if the Purchaser is unable to pay its debts or is insolvent as defined in section 123 of the Insolvency Act 1986;

19.1.5 if the Purchaser enters into (or proposes to enter into) a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise or a moratorium is agreed imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the Purchaser;

19.1.6 if notice of intention to appoint an administrator is given by any person (including the Purchaser's directors, the Purchaser or any qualifying floating charge holder as defined in the Insolvency Act 1986) or any step is taken by any person with a view to placing the Purchaser into administration as defined by the Insolvency Act 1986; or

19.1.7 if any event or circumstances occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed in the above sub-conditions in relation to the Purchaser;

19.1.8 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly;

then, without prejudice to any other right or remedy available to the Company, (i) the Company shall be entitled by written notice to the Purchaser to cancel the Contract without any liability to the Company, to stop any Goods in transit and to suspend any further deliveries and (ii) the price for any Goods delivered but not paid for shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **20. CANCELLATION AND AMENDMENT OF ORDERS**

20.1 Subject to Condition 20.2 the Company shall only accept cancellation of orders upon receipt of an undertaking that the Purchaser will pay those costs arising out of the cancellation (which costs shall be determined by the Company and calculated with reference to the length of time between the cancellation date and the due delivery date and will include the total loss suffered by the Company).

20.2 Goods subject to Special Orders cannot be cancelled and the relevant Goods shall be delivered to the Purchaser. Payment of the full price for the relevant Goods shall be made to the Company in accordance with the Conditions notwithstanding any notice from the Purchaser cancelling or purporting to cancel a Special Order.

20.3 The Purchaser shall indemnify and keep indemnified the Company against any loss, liability or expense whether arising directly or indirectly by virtue of any act, omission or default on the part of the Purchaser in connection with this provision.

20.4 In the event of any amendment(s) to an order, this must be authorised by the Company in Writing and a minimum notice period of 7 days must be given.

## **21. GENERAL**

### **21.1 Notices**

21.1.1 All notices between the parties with respect to these Conditions shall be in Writing and signed by or on behalf of the party giving it.

21.1.2 Any notice may be served:

(a) by delivering it by hand;

(b) by first class pre-paid post or recorded delivery; or

(c) by fax, provided that a copy is also sent by post as set out in Condition 21.1.2(b);

(d) by email, provide that a copy is also sent by post as set out in Condition 21.1.2.(b).

to the address of the addressee given at the start of this Contract or such other address as the addressee may from time to time have notified for the purpose of this Condition.

21.3 If any of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other Conditions and the remainder of the Condition in question shall not be affected and the parties hereto shall renegotiate the terms of the Condition so invalidated with a view to agreeing a revised and valid Condition.

21.4 The Company reserves the right to revise these Conditions from time to time on not less than 30 days notice in Writing to the Purchaser. The Purchaser will be subject to the policies and Conditions in force at the time that the Purchaser enters into a Contract with the Company.

21.5 It is not intended that any third parties should be entitled to enforce the terms of these Conditions and any Contract (unless otherwise expressly so provided) purely by virtue of the Contracts (Rights of Third Parties) Act 1999.

21.6 The Contract shall be governed by and construed in accordance with the laws of England, and the Purchaser agrees to submit to the exclusive jurisdiction of the English courts.