

1 INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Associated Companies: in relation to the Supplier, any subsidiary of the Supplier or any holding company of the Supplier or any other subsidiary or such holding company and the term "subsidiary" and "holding company" shall have the same meanings attributed thereto in section 736 of the Companies Act 1985 as amended.

Conditions: the terms and conditions set out in this document (as amended from time to time) relating to the sale of Products and/or the supply of Services.

the Contract: any contract made between the Customer and the Supplier for the sale of Products and/or the supply of Services by the Supplier.

the Customer: the person(s), firm or company whose order for the Products and/or the Services is accepted by the Supplier.

Equipment: any equipment provided by the Customer for refurbishment, equipment manufactured, equipment installed and/or equipment designed by the Supplier pursuant to the provision of the Products and/or the Services.

Force Majeure: any cause preventing the Supplier from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of the Supplier including, without limitation, strikes, lockouts or other industrial disputes (whether involving the work force of the Supplier or otherwise), protest, act of God, pandemic war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic or default of suppliers or subcontractors.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Products and/or Services, as set out in the Customer's purchase order form or the Customer's written or verbal acceptance of the Quotation, as the case may be.

Order Acknowledgement: written acknowledgement, of the Order, issued by the Supplier.

Products: any goods (or any part of them) which the Supplier supplies to the Customer under a Contract.

Product Specification: any specification for the Products, including any relevant plans or drawings that is agreed by the Customer and the Supplier.

Quotation: the written statement issued by the Supplier, setting out the estimated cost of the Products and/or Services.

Services: any services which the Supplier provides to the Customer (including of them or any part of them) under a Contract including (but not limited to) the design, manufacture, service, repair, refurbishment, installation and/or supply of Equipment.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: Serck Services UK Limited T/A Serck Heat Exchange, Serck Motorsport and/or its Associated Companies.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.2 Interpretation:

1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its successors and permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.5 A reference to writing or written includes and email but not fax.

2 BASIS OF CONTRACT

2.1 Subject to any variation pursuant to clause 2.2, any Contract made with the Supplier for the sale of Products or the supply of Services is subject to these Conditions to the exclusion of all other terms of business, including any which the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 Any variation to these Conditions and any representations about the Products shall have no effect unless expressly agreed in writing and signed by a director of the Supplier.

2.3 Each Order or written acceptance of a Quotation will be deemed to be an offer by the Customer to purchase Products and/or Services in accordance with these Conditions.

2.4 The Order shall only be deemed to be accepted when the Order Acknowledgement is issued at which point and on which date the Contract is formed (**Commencement Date**). No Contract will come into existence until an Order Acknowledgement is issued by the Supplier.

2.5 Any Quotation is valid for the period specified and if no such period is specified, is valid for a period of 30 (thirty) days only from its date of issue, provided that the Supplier has not previously withdrawn it.

2.6 All samples, drawings, descriptive matter, specifications or advertising issued by the Supplier or manufacturer of the Products and any descriptions and illustrations contained in the Supplier's promotional materials are issued for the sole purpose of giving an approximate idea of the Products represented or described in them. They shall not form part of the Contract nor have any contractual force and this is not a sale by sample.

2.7 All of these Conditions shall apply to the supply of both Products and Services except where application to one or the other is specified.

3 THE PRODUCTS

- 3.1 The Products are described in the Product Specification and the Order Acknowledgement.
- 3.2 Product testing, quality specification and certification shall be as detailed in the Order Acknowledgement or Quotation. If the Customer requires further or independent tests to be carried out these shall be chargeable to the Customer unless otherwise agreed in writing in advance by the Supplier.
- 3.3 To the extent that the Products are to be manufactured and/or the Services are performed in accordance with a Product Specification or instructions supplied by the Customer:
 - 3.3.1 (without prejudice to any other of the Contract terms) no guarantee or warranty is given by the Supplier as to the practicability, efficiency, safety or otherwise of the Products and/or the work; and
 - 3.3.2 the Customer will indemnify and keep the Supplier indemnified against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for:
 - 3.3.2.1 actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Product Specification. This clause 3.3.2.1 shall survive termination of the Contract; and
 - 3.3.2.2 any impracticability, inefficiency or lack of safety or other defect in the Products and/or works where such defect is due (whether in whole or in part) to faults or omissions in such information, drawing, design, Product Specification or instructions.
 - 3.3.3 unless the Supplier agrees otherwise in writing, all works (including design drawings) and any idea, invention or improvement made by or on behalf of the Supplier pursuant to the Customer's commission and all Intellectual Property Rights therein (including any design right in a design created by the Supplier in pursuance of the commission) shall belong to the Supplier.
- 3.4 No variation in the Product Specification or design of any Products and/or works which in the reasonable opinion of the Supplier does not affect the suitability of the Products and/or works for the purpose for which they are supplied by the Supplier will constitute a breach of contract or impose upon the Supplier any liability whatsoever.
- 3.5 The Supplier reserves the right to amend the Product Specification if required by any applicable statutory or regulatory requirement.
- 3.6 The Supplier will be under no liability whatsoever to the Customer in respect of any loss, damage or claim incurred by or made against the Customer should any Products and/or works infringe any Intellectual Property Right.
- 3.7 Unless otherwise agreed in writing in advance all patterns, drawing, tools or other similar items produced or other property (whether intellectual property or not) owned or created by the Supplier will remain the property of the Supplier and must not be used or copied by the Customer.
- 3.8 Where it is agreed that ownership in any data, patterns, drawing, tools or other similar items is to pass to the Customer property shall only pass when such items have been paid for by the Customer in full.
- 3.9 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 3.10 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 3.11 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 3.10.
- 3.12 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

4 THE SUPPLY OF SERVICES

- 4.1 The Supplier shall supply the Products and/or Services to the Customer in accordance with the Service Specification in all material respects. The Supplier cannot guarantee to maintain or improve the performance of serviced and/or refurbished Equipment.
- 4.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order Acknowledgment, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 4.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services.
- 4.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 4.5 Services may be performed on the Customer's and/or other third party site nominated by the Customer.
- 4.6 Delays, beyond the exclusive control of the Supplier, may occur. If extra time is required by the Supplier to perform the Contract as a result of such delays, then this additional time will be charged in accordance with the rates detailed in the Order Acknowledgement or Quotation.
- 4.7 Should the Supplier's performance under the Contract be impacted by any changes in travel due to unplanned restrictions (including but not limited to the measures reasonably required working alongside a pandemic) the Supplier reserves the right to invoice the Customer for all labour and any other additional costs that may have been incurred as a consequence.

5 CUSTOMER OBLIGATIONS

- 5.1 The Customer shall:
 - 5.1.1 ensure that the terms of the Order and any information it provides to the Supplier in relation to the fulfilment of the Order, including but not limited to, drawings, design, quality management plans and material selection, are complete, accurate and are approved within any agreed timescales. For the avoidance of doubt the Customer is ultimately responsible for the choice of materials used including but not limited to finishes and/or any protective coatings;
 - 5.1.2 co-operate with the Supplier in all matters relating to the Services and ensure any pre-Service requirements and/or conditions are fulfilled, failure to do so may result in charges being applied in accordance with clause 4.6;
 - 5.1.3 follow any installation, operational and maintenance instructions provided and, where applicable, use suitably qualified personnel and resources to install, manage and maintain the Equipment;
 - 5.1.4 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - 5.1.5 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 5.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

- 5.1.7 comply with all applicable laws, including health and safety laws;
 - 5.1.8 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
 - 5.1.9 comply with any additional obligations as set out in the Service Specification and the Product Specification, including operating the Equipment within defined process parameters;
 - 5.1.10 decontaminate any of the Equipment to be provided to the Supplier, pursuant to the Order, and make it safe to transport and work on; and
 - 5.1.11 provide a safe working environment for the Supplier, if the Supplier has to work on site in accordance with the provisions of clause 4.5.
- 5.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 5.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 5.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in clause 5.2; and
 - 5.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

6 PRICE

- 6.1 The price for the Products or Services shall be the price set out in the Order Acknowledgement or Quotation and (unless otherwise stated in the Order Acknowledgement; or relevant Quotation, if there is disparity between the two, the price in the Order Acknowledgement shall prevail):
- 6.1.1 To destinations in the United Kingdom, exclusive of:
 - (i) packaging, delivery and insurance costs;
 - (ii) value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.
 - 6.1.2 To destinations overseas, exclusive of:
 - (i) packaging, packing, cases, delivery and insurance to a Port or Airport in the United Kingdom nominated by the Supplier.
 - (ii) local duties.
- 6.2 There will be no reduction in price for Products collected from the Supplier's premises by the Customer or their nominated representative. Unless otherwise stated in the Order Acknowledgement or associated Quotation.
- 6.3 Unless alternatively agreed in writing in advance, the Supplier reserves the right to dispose of all/any scrap materials generated from the provision of the Services, including that generated from Equipment, and for the Supplier to retain any resulting revenue.
- 6.4 The Supplier reserves the right to increase the price of the Products, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products to the Supplier that is due to:
- 6.4.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 6.4.2 any request by the Customer to change the delivery date(s), quantities or types of Products and/or Services ordered, or changes to the Product Specification or Service Specification; or
 - 6.4.3 any delay caused by any instructions of the Customer in respect of the Products and/or Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Products and/or Services.
- 6.5 The Supplier reserves the right to increase the price of the Product and/or Services in accordance with the provisions of Clause 4.7.
- 6.6 Fees will be payable by the Customer for any material stored by the Supplier on behalf of the Customer (including, without limitation, storage and insurance).

7 PAYMENT

- 7.1 In respect of Products, the Supplier shall invoice the Customer when the delivery is dispatched. In respect of Services, the Supplier shall invoice the Customer on completion of the Services.
- 7.2 The Customer shall pay each invoice submitted by the Supplier:
- 7.2.1 immediately upon receipt of the invoice in full and in cleared funds to a bank account nominated in writing by the Supplier unless the Customer has a credit account,
 - 7.2.2 For all credit accounts payment is due on the 30th of the month following the month of invoice and time for payment of all sums due under the Contract shall be of the essence.
- 7.3 A Customer may apply for a credit account. The Supplier may in its absolute discretion set and alter the Customer's credit limit or withdraw credit terms at any time and without notice. The Supplier may decide not to deliver Products and/or Services ordered if the price of those Products and/or Services increases the amount owed by the Customer to the Supplier beyond the Customer's credit limit.
- 7.4 The method of payment for Customers based overseas shall be as detailed in clause 12.5 (Export).
- 7.5 Upon termination of the Contract all sums payable to the Supplier under the Contract will become due immediately.
- 7.6 All payments to be made by the Customer under the Contract will be made in full without any set off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature unless the amount thereof has been approved in advance by the Supplier in writing or the Customer is required by law to make any such deduction or withholding.
- 7.7 The Supplier may appropriate any payment made by the Customer to the Supplier to such of the invoices for the Products or Services as the Supplier thinks fit, despite any purported appropriation by the Customer.
- 7.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 15 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before and after any judgment. Interest under this clause 7.8, at the higher of 5% per

annum above the highest Bank of Scotland base lending rate prevailing from time to time but at 4% a year for any period when that base rate is below 0%, and the Supplier will be entitled to suspend deliveries of the Products and/or performance of the Services until the outstanding amount has been received by the Supplier from the Customer.

8 INSTALMENTS

- 8.1 The Supplier may deliver the Products by separate instalments or perform any of the Services in stages. Each separate instalment or stage will be documented, invoiced and paid for separately in accordance with the provisions of the Contract and as detailed in the Order Acknowledgement.
- 8.2 Each instalment or stage shall constitute a separate Contract and no delay in delivery of, defect in, cancellation or termination of any one Contract relating to an instalment or stage will entitle the Customer to repudiate or cancel any other Contract, instalment or stage.
- 8.3 Any stage payments must be agreed in writing in advance between the parties. Where stage payments have been agreed the Supplier will provide evidence to support a stage being reached with the invoice and payment will be requested in accordance with clause 7 (Payment). Non-payment or late payment may result in the Supplier invoking any/all of the remedies at clause 7.8.
- 8.4 Instalment invoices are to be paid in accordance with the provisions of clause 7 (Payment) and the Customer's attention is drawn to the consequences of late payment detailed at clause 7.8.

9 DELIVERY

- 9.1 The Supplier shall ensure that:
 - The Supplier shall deliver the Products with a Delivery Note to the location set out in the Order Acknowledgement or such other location as the parties may agree in advance in writing (**Delivery Location**) at any time after the Supplier notifies the Customer that the Products are ready.
- 9.2 The Supplier will use reasonable endeavors to deliver or perform each of the Orders within the time specified on the Order Acknowledgement and, if no time is specified, then within a reasonable time, but any dates for delivery of the Products are approximate only and the time of delivery or performance is not of the essence. The Supplier shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions or approvals that are relevant to the supply of the Products or Services. The Supplier will not be deemed to be in breach of this Contract, nor will the Supplier have any liability to the Customer for direct, indirect or consequential loss (all of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery except as set out in this condition. Any delay in delivery will not entitle the Customer to cancel the order unless and until such delay exceeds 180 days and the Customer has given 7 (seven) days written notice to the Supplier requiring the delivery to be made and the Supplier has not fulfilled the delivery within that period. If the Customer cancels the order in accordance with this clause 9.2 then the Supplier will refund to the Customer any sums which the Customer has paid to the Supplier in respect of that order or part of the order which has been cancelled.
- 9.3 If the Customer fails to take or accept delivery or performance of any of the Products or Services when they are ready for delivery or performance or to provide any instructions, documents, licences or authorisations required to enable the Products to be delivered or Services to be performed on time (except solely on account of the Supplier's default), the Products or Services will be deemed to have been delivered or performed on the due date and (without prejudice to its other rights) the Supplier may:
 - 9.3.1 store or arrange for storage of the Products until actual delivery or sale in accordance with clause 6.4.2 and charge the Customer for all related costs and expenses (including, without limitation, storage and insurance); and/or
 - 9.3.2 sell any of the Products.

10 RISK AND TITLE

- 10.1 Risk of damage to or loss of the Products will pass to the Customer when the Products are placed at the disposal of the Customer including at the premises of the Supplier and regardless of whether or not the Products are delivered to the Delivery Location.
- 10.2 Title to the Products shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Products.
- 10.3 Until title of the Products has passed to the Customer the Customer will:
 - 10.3.1 hold the Products in a fiduciary capacity on trust for the Supplier;
 - 10.3.2 store the Products (at no cost to the Supplier) separately from all other products of the Customer of any third party in such a way that they remain readily identifiable as the Supplier's property;
 - 10.3.3 not destroy, deface, obscure or obliterate any identifying mark or packaging on or relating to the Products; and
 - 10.3.4 maintain the Products in satisfactory condition insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier from the date of delivery and will whenever requested by the Supplier produce a copy of the policy of insurance;
 - 10.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in 15.1; and
 - 10.3.6 give the Supplier such information relating to the Products as the Supplier may require from time to time.
- 10.4 Subject to Condition 10.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Products. However, if the Customer resells the Products before that time it does so as principal and not as the Supplier's agent.
- 10.5 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in 15.1 then, without limiting any other right or remedy the Supplier may have:
 - 6.6.1 the Customer's right to resell Products or use them in the ordinary course of its business ceases immediately; and
 - 6.6.2 the Supplier may at any time:
 - 6.6.2.1 require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product; and
 - 6.6.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.
- 10.6 Where the Supplier is unable to determine whether any items are the Products in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all items of the kind sold by the Supplier to the Customer in the order in which they were invoiced to the Customer.
- 10.7 The Supplier may at any time after payment of the Products has become overdue:
 - 10.7.1 require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product; and/or
 - 10.7.2 take possession of the Products (including stopping any Products in transit) and remove them and the Customer shall be deemed to have granted irrevocable authority to the Supplier to enter upon the premises of the Customer or of any

third party where the Products are stored in order to recover them.

- 10.8 If the Supplier resells the Products so recovered (and the Supplier shall not be under any obligation to resell or if it does resell, to sell at any particular price) any surplus proceeds of sale after deduction of the Supplier's expenses (including legal expenses) in connection with the recovery and sale and of all sums due or owing from the Customer to the Supplier shall be for the account of the Customer.

11 DAMAGE, SHORTAGE OR LOSS IN TRANSIT

- 11.1 In respect of Products other than Products sold for export from the United Kingdom, the Supplier will not consider any claim for any damage, shortage or loss in transit unless the Customer has given written notice to the Supplier and any carrier employed by the Supplier and (if applicable) the carrier's conditions of carriage and claims notification procedure have been complied with by the Customer within the following periods:
- 11.1.1 in the case of partial damage or shortage or loss in the consignment in question to the Supplier within 7 (seven) days and to any carrier other than the Supplier within 2 days from the date of receipt of the Products in question.
- 11.1.2 in the case of total loss of the Products in question to both Supplier and to any such carrier, within 7 (seven) days of the dispatch of the Products in question.

12 EXPORT

- 12.1 Where the Products are supplied for export from the United Kingdom, the provisions of this clause 12 shall (subject to any special terms agreed in writing in advance between the Supplier and Customer) apply notwithstanding any other provisions of these Conditions.
- 12.2 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties on them.
- 12.3 Unless otherwise agreed in writing between the Supplier and the Customer the Products shall be delivered FOB (Incoterms 2000) to the air or seaport of the shipment and the Supplier shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979 as amended.
- 12.4 The Customer shall be responsible for arranging for testing and inspection of the Products at the Supplier's premises before shipment. The Supplier shall have no liability for any claim in respect of any defect in the Products which would be apparent on inspection where such inspection is made after shipment, or for any loss or damage to the Products after they have been delivered in accordance with clause 12.3 although the Supplier will arrange insurance in transit (at the Customer's cost) if reasonably instructed to do so by the Customer in writing.
- 12.5 Unless otherwise agreed in advance in writing between the parties, payments of all amounts due to the Supplier for Products and/or Services supplied pursuant to this clause 12 (Export), shall be made by a satisfactory (as determined by the Supplier) irrevocable letter of credit immediately upon issue of the Order Acknowledgment and confirmed by a United Kingdom bank as nominated by the Supplier, in its absolute discretion. The letter of credit shall be for the price payable for the Products and/or Services (together with any other charges payable in accordance with clause 6) and shall be valid for 6 (six) months. The Supplier will be entitled to immediate cash payment upon presentation of documents required to trigger such payment.
- 12.6 The Customer undertakes not to offer the Products for resale in any country notified by the Supplier to the Customer at or before the time the Customer's order is placed, or to sell the Products to any person if the Customer knows or has reason to believe that such person intends to resell the Products in any such country.

13 LIMITATION LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 13.1 The Supplier will, free of charge within a period of 12 (twelve) months (or such other period as detailed on the Order Acknowledgement) from the date of dispatch of the Products or performance of the Services, which are proved to the reasonable satisfaction of the Supplier to be defective due to defects in material or workmanship repair or at its option, replace or credit the invoice value of such Products or re-perform or at its option credit the invoice value of such Services. These obligations will not apply where:
- 13.1.1 the Products (or Customer's items in connection with which Services have been carried out) have been altered or subjected to misuse, damage or unauthorised repair or modification or abnormal working conditions or improperly installed (contrary to the Supplier's written or verbal instructions) or connected (unless carried out by the Supplier or with written approval of the Supplier);
- 13.1.2 with the Customer has not performed its obligations set out in clause 5.1;
- 13.1.3 the Customer has failed to notify the Supplier in writing of any defect or suspected defect within 14 (fourteen) days of the same coming to the knowledge of the Customer;
- 13.1.4 the Customer is in breach of this or any other contract made with the Supplier; or
- 13.1.5 any instructions as to storage of the Products have not been complied with in all respects.
- 13.2 Any Products replaced will belong to the Supplier. Any repaired or replaced Products or Services re-performed or remedied will have the benefit of the terms set out in clause 13.1 for the unexpired portion of the 12 (twelve) month period from the original date of delivery or performance.
- 13.3 In the event of any breach of the Supplier's express obligations under clauses 9.2, 13.1 and 13.2 above the remedies of the Customer will be limited to damages.
- 13.4 Nothing in this Contract limits any liability which cannot legally be limited, including liability for:
- 13.4.1 death personal injury caused by negligence;
- 13.4.2 fraud or fraudulent misrepresentation;
- 13.4.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- 13.4.4 defective products under the Consumer Protection Act 1987.
- 13.5 Except as provided in clauses 9.2, 13.1 to 13.5 of this Contract, the Supplier will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or 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 like loss) howsoever caused or arising out of or in connection with:
- 13.6 Any of the Products, or the manufacture or sale or supply, or failure or delay in supply, of the Products or the provision of any Services by the Supplier or on the part of the Supplier's employees, agents or sub-contractors;
- 13.6.1 Any breach by the Supplier of any of the express or implied terms of the Contract;
- 13.6.2 Any use made or resale by the Supplier of any of the Products, or of any product incorporating any of the Products; or
- 13.6.3 Any statement made or not made or advice given or not given, by or on behalf of the Supplier.
- 13.7 Except as set out in clauses 9.2, 13.1 to 13.5, the Supplier hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.

- 13.8 Each of the Supplier's employees, agents or sub-contractors may rely upon and enforce the exclusions and restrictions of liability in clauses 9.2 and 13.1 to 13.5 in that person's own name and for that person's benefit, as if the words "its employees, agents and sub-contractors" followed the word Supplier wherever it appears in these Conditions (save for such reference in clause 13.6.1).
- 13.9 The Customer agrees to indemnify, keep indemnified and hold harmless the Supplier from and against all costs (including the costs of enforcement), expenses, liabilities, injuries, 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 like loss), damage, claims, demands, proceedings and legal costs (on a full indemnity basis) and judgments which the Supplier incurs or suffers as a consequence of a direct or indirect breach or negligent performance by the Customer of the terms of the Contract. This clause 13.9 shall survive termination of the Contract.

14 DATA PROTECTION

Each Party shall be responsible for its compliance with UK Data Protection Legislation. Should personal data (as defined by Data Protection Legislation) be processed as part of the Service, the parties will enter into a separate data processing agreement.

15. TERMINATION

- 15.1 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer if:
- 15.1.1 the Customer is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Customer fails to remedy such breach within 7 (seven) days service of a written notice from the Supplier, specifying the breach and requiring it to be remedied. For the avoidance of doubt a material breach includes but is not limited to failure to pay any sums or to take delivery of any Products or Services in accordance with the Contract;
- 15.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 15.1.3 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 15.1.4 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 15.1.5 the Supplier reasonably anticipates that one of the above set of circumstances is about to occur.
- 15.2 Termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either the Supplier or the Customer accrued prior to termination.
- 15.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services and/or any further deliveries of Products under the Contract or any other contract between the Customer and the if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clauses 15.1.1 to 15.1.5 or the Supplier reasonably believes that the Customer is about to become subject to any of them.

16 CONSEQUENCES OF TERMINATION

- 16.1 On termination of the Contract the Customer shall immediately:
- 16.1.1 pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest;
- 16.1.2 in respect of Services and Products supplied and/or in progress but for which no invoice has been submitted (including costs reasonably incurred and/or the Supplier has committed to incur in relation to the provision of Services and/or Products), the Supplier shall submit an invoice, which shall be payable by the Customer immediately upon receipt; and;
- 16.1.3 return all of the Supplier materials or Products which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

17. FORCE MAJEURE

- 17.1 The Supplier will not be in breach of the Contract or otherwise liable to the Customer in respect of any failure to perform or delay in performing any of its contractual obligations to the Customer attributable to any cause preventing the Supplier from performing any or all such obligations which arise from or are attributable to acts, events, omissions or accidents due to Force Majeure provided that the Supplier has and continues to comply with its obligations set out in Condition 17.2.
- 17.2 If the Supplier's performance of its obligations under the Contract is affected by Force Majeure:
- 17.2.1 it will give written notice to the Customer, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavours to bring the effect of the Force Majeure event to an end and, whilst the Force Majeure is continuing, mitigate its severity, without being obliged to incur any expenditure;
- 17.2.2 subject to the provisions of Condition 17.3, the date for performance of such obligation will be deemed suspended only for a period equal to the delay caused by such event; and
- 17.2.3 it will not be entitled to payment from the Customer in respect of extra costs and expenses incurred by virtue of the Force Majeure.
- 17.3 If the Force Majeure in question continues for more than 3 (three) months, either party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than 15 (fifteen) days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.

18. LIEN

- 18.1 The Supplier will (without prejudice to any other remedy available to it) have in respect of all unpaid debts due from the Customer a general lien on all property (including materials) of the Customer in the possession or control of the Supplier for

whatever purpose and whether worked upon or not and be entitled on the expiration of not less than 14 (fourteen) days' notice in writing to the Customer to dispose of such property and to apply the proceeds towards the satisfaction of such debts.

19. SET OFF

19.1 If the Customer shall become bankrupt or insolvent or compound with creditors, or in the event of a resolution being passed or proceedings being commenced for the liquidation of the Customer, or if an administrative receiver or manager is appointed of all or any part of its assets or undertakings, the Supplier shall be entitled to cancel the Contract in whole or in part, and also that the Supplier shall reserve the right to offset any monies owed to the Customer against any outstanding debt existing from the Customer to the Supplier.

20. GROUP CREDIT ACCOUNTS

20.1 If the Customer shall be overdrawn or overdue from the stated terms of payment on any of its credit accounts with the Supplier then the Supplier may:

20.1.1 charge interest on the terms of Condition 7.8 on the overdue sum; and

20.1.2 charge interest on sums outstanding under an account hitherto described as "interest free".

20.2 All monies and liabilities under all the Customer's accounts with the Supplier shall immediately become due and owing and the Supplier shall be entitled to immediately close all accounts or any account of the Customer.

20.3 The Supplier may appropriate any payment made by the Customer and apply it in total or partial satisfaction of any debt then due from the Customer to the Supplier.

20.4 Where the amount paid by the Customer is less than the amount due to the Supplier under the Contract to which it is appropriated, the Supplier may appropriate the payment to any individual Products or items supplied under that Contract.

21. GENERAL

21.1 Assignment: The Supplier may at any time assign, novate, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

21.2 Notices:

21.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

(i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(ii) sent by email to the address specified by the:
Customer in the Order or request for quotation documentation; or
Supplier in the Order Acknowledgement or other documentation provided by the supplier.

21.2.2 Any notice or communication shall be deemed to have been received:

(i) if delivered by hand, on signature of a delivery receipt and

(ii) if sent by next working day delivery service, or at the time recorded by the delivery service; and

(iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 21.2.2, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

21.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21.3 Severance: The invalidity of any individual provisions of these Conditions shall not affect the validity of the remaining provisions. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 21.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

21.4 No partnership or agency: Nothing contained in these Conditions and no action taken by the parties pursuant to a Contract shall be deemed to constitute a relationship between the parties or partnership, joint venture, principal and agent or employer and employee. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

21.5 Waiver: Any failure or delay by the Supplier in exercising any of its rights, powers or remedies under the Contract will not in any circumstances impair such right, power or remedy nor operate as a waiver of it, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

21.6 Entire agreement:

21.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

21.6.3 Nothing in this clause shall limit or exclude any liability for fraud.

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

22. GOVERNING LAW

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

23. JURSDICTION

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