

TERMS AND CONDITIONS FOR THE SUPPLY OF DELIVERABLES



1. Definitions and Interpretation

1.1 In these Conditions the following words and expressions have the following meanings unless inconsistent with the context:

- “Additional Charges” the costs of storage, any agreed expenses, any taxes, duties or other charges levied by any Governmental or authority in respect of or by reason of the sale, delivery, export or import of the Deliverables, courier and messenger costs and any other additional charges payable by the Customer in addition to the Price;
 - “Conditions” these terms and conditions;
 - “Confidential Information” without limitation, business, commercial, economic, financial, operational, technical, administrative, marketing, planning and staff information and data relating to the Supplying Party or its interests disclosed including any Intellectual Property Rights to the Receiving Party whether before, during or after the provision of the Deliverables, whether in written, oral, pictorial or any other form, and all information, data, know-how, trade secrets, formulae, processed, designs, photographs, drawings, specifications, software programs, samples or other material attributable to or deriving its existence from the provision of the Deliverables. “Supplying Party” and “Receiving Party” shall have the meanings ascribed in Condition 14;
 - “Contract” any agreement for the supply of Deliverables from the Supplier to the Customer in accordance with Condition 2.5;
 - “Contract Details” the specific details of the Contract confirmed by the Supplier in writing to the Customer prior to delivery of the Deliverables including any Proposal;
 - “Control” the person or persons acting in concert:
 - (a) controlling or being able to control the composition of a majority of the board of directors of the Customer;
 - (b) ultimately or beneficially holding directly or indirectly 50% or more of the equity share capital of the Customer; able to vote over 50% of the issued voting share capital or any class thereof or, who otherwise have controlled influence over the Customer by virtue of their shareholding in the Customer or by agreement;
 - “Costs” all costs, (including but not limited to any legal fees (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier (either directly or by a third party) including disbursements, VAT and other expenses;
 - “Customer” the person which has accepted these Conditions;
 - “Deliverables” Goods, Services, all products, materials and Documents developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form, including, without limitation, computer programs, data, reports and specifications (including drafts) but excluding Tooling;
 - “Delivery Date” the date(s) on which the Supplier shall deliver the Deliverables in accordance with Condition 9.1 and as indicated by the Supplier in the Contract Details or on the date(s) as otherwise agreed between the parties in writing from time to time;
 - “Delivery Location” the location for delivery of the Deliverables in accordance with Condition 9.1 and as set out in the Contract Details;
 - “Documents” without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture, or other image, tape, disk or other device or record embodying information in any form;
 - “Due Date” the date on which payment is due in accordance with Condition 0;
 - “Goods” all goods supplied by the Supplier to the Customer pursuant to the Contract as detailed in the Contract Details;
 - “Input Materials” all Documents, information and materials provided by the Customer to the Supplier to enable the Supplier to provide the Deliverables, including computer programs, data, reports and specifications and any such requirements set out in the Contract Details;
 - “Intellectual Property Rights” all patents, industrial designs, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and “Intellectual Property Right” means any one of the Intellectual Property Rights;
 - “Price” the price due from the Customer for the supply of the Deliverables as detailed in the Contract Details;
 - “Proposal” any proposal, tender, estimate, scope of works or quotation submitted to the Customer by the Supplier prior to the Contract being made;
 - “Services” the services to be provided by the Supplier to the Customer pursuant to the Contract and detailed in the Contract Details;
 - “Supplier” Hexagon Metrology Limited, a company incorporated in England and Wales with company number 1523574 whose registered office is at Metrology House, Halesfield 13, Telford, Shropshire TF7 4PL;
 - “Tooling” the tooling developed by the Supplier to enable it to provide the Deliverables;
 - “Unpaid Amount” any sum due to the Supplier under the Contract which has not been paid by the Customer to the Supplier by the Due Date; and
 - “Working Day” any day from Monday to Friday other than a statutory holiday or public holiday in England.
- 1.2 References to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified or re-enacted and in force from time to time, and any subordinate legislation made from time to time under the relevant statute or statutory provision.
- 1.3 References to “persons” include natural persons, firms, partnerships, companies, corporations, associations and organisations, (in each case whether or not having separate legal personality).
- 1.4 Use of any gender includes the other genders.
- 1.5 Words in the singular include the plural and words in the plural include the singular.
- 1.6 Any reference to “writing” or any cognate expression includes communications by post, email and facsimile but excludes text messages.



- 1.7 The headings to Conditions do not affect the interpretation of these Conditions.
- 1.8 Any phrase introduced by the term "include", "including", "in particular" or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.

2. Basis of Contract

- 2.1 These Conditions shall apply to the sale and supply by the Supplier of all Deliverables purchased by the Customer and these Conditions shall govern the Contract to the exclusion of any other terms and conditions introduced or submitted by the Customer.
- 2.2 No variation (which shall include a concession or permit) of these Conditions shall be binding unless agreed in writing by a director of the Supplier and no collateral or supplemental contract may be made or construed unless confirmed in writing by a director of the Supplier.
- 2.3 Any Proposal submitted to the Customer will not constitute an offer and shall remain valid for the period stated therein, but if no period is specified such Proposal shall be valid for 30 days from the date of issue. Notwithstanding this Condition 2.3, any Proposal shall no longer be valid where a sub-contractor or supplier to the Supplier has changed its charges.
- 2.4 Each order or acceptance of a Proposal for the supply of Deliverables by the Customer shall be deemed to be an offer by the Customer to purchase the Deliverables subject to these Conditions.
- 2.5 These Conditions shall become binding on the Customer when they are signed by the Customer, or if they are not signed, when the Supplier: (a) acknowledges the order placed by the Customer in writing; or (b) commences processing of the order and/or provision of the Deliverables; whichever is the earlier, at which point a "Contract" shall come into existence between the Supplier and the Customer.
- 2.6 Where the Supplier confirms the details of the Contract in writing, the Customer shall be under a duty to bring any discrepancies to the Supplier's notice within 3 days of receipt of the written confirmation, and if the Customer fails to bring any such discrepancies to the Supplier's notice within the said time period, the Customer shall be bound by the details contained mentioned or referred to in the written confirmation of the Contract.
- 2.7 The Supplier's employees or agents are not authorised to make any representations concerning the Deliverables unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed save that nothing in this Condition excludes the Supplier's liability for fraudulent misrepresentation.
- 2.8 In the event that the Customer wishes to cancel an order, it may only do so with the written consent of a director of the Supplier and on the terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.
- 2.9 Any typographical, clerical or other omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

3. Price

- 3.1 Except as otherwise stated in the Contract Details or as agreed by the parties in writing, the Price is inclusive of delivery, insurance, packaging and installation costs. Where the Customer requests storage or any variance to the delivery, packaging or installation solution offered by the Supplier, the Supplier shall be entitled to charge the Customer for such items as an Additional Charge which will appear separately on the Supplier's invoice, to be paid in accordance with Condition 4 below.
- 3.2 The Supplier shall be entitled, where set out in the Contract Details, to recover from the Customer as an Additional Charge, all reasonable

expenses properly and necessarily increased as a result of providing the Deliverables subject to production of receipts or other appropriate evidence of payment.

- 3.3 The Price and any known Additional Charges are as stated in the Contract Details. For the avoidance of doubt, the Price does not include the transfer of Tooling to the Customer, title in which shall remain with the Supplier.
- 3.4 The Supplier reserves the right to increase the Price and/or Additional Charges by giving written notice at any time up to 7 days prior to delivery in accordance with Condition 9.1 to take account of any increase howsoever arising in the Price and/or Additional Charges including but without being limited to any increase in the costs of materials, labour or delivery or to take account of any fluctuations in exchange rates, or alteration of duties as shall be reasonable in the circumstances.
- 3.5 The Supplier reserves the right to charge the Customer, as an Additional Charge, for any additional work undertaken over and above that which would have been otherwise required, (including any expenses or financial penalties incurred by the Supplier) as a result of any instructions supplied by the Customer being incomplete, incorrect, inaccurate, illegible, out of sequence, in the wrong form, or provided to the Supplier too late to enable it to meet a deadline.
- 3.6 Unless otherwise stated in writing, the Price quoted is exclusive of VAT or any other sales tax which will be charged at the rate in force at the time of despatch.

4. Payment Terms

- 4.1 The Customer shall make payment and the Supplier shall be entitled to invoice the Customer for the Price in accordance with the Contract Details.
- 4.2 In the event that any Additional Charges arise at any point following the issue by the Supplier of its invoice, the Supplier shall be entitled to invoice the Customer as and when such Additional Charges arise.
- 4.3 The Customer shall make payment for the Price and where applicable any Additional Charges in sterling by telegraphic transfer into such bank account as notified by the Supplier in writing from time to time. Unless agreed otherwise in writing any payment received by the Supplier in any other currency or by any other method will not be deemed to be payment for the Deliverables in question. Payment will not be deemed payment for the Deliverables in question unless and until it is received in full and in cleared funds.
- 4.4 The Customer shall pay each invoice from the Supplier without any set-off or other deduction within:
 - (a) 7 days from the invoice date where the invoice relates to a deposit payment; and
 - (b) 30 days from the invoice date for all other invoices; ("Due Date").
- 4.5 The Supplier's invoices shall be payable in accordance with this Condition 4, notwithstanding that delivery of the Deliverables may not have taken place and title may not have passed to the Customer. The time of payment of the Supplier's invoices shall be of the essence of the Contract.
- 4.6 If the Customer fails to pay in full any invoice from the Supplier by the Due Date or in any other way breaches the terms of this Contract without prejudice to any other right or remedy the Supplier may have:
 - (a) all invoices issued by the Supplier in respect of any Deliverables sold or supplied and any Additional Charges pursuant to this Contract and any sums due for goods and/or services under any other contract which may exist between the parties shall immediately fall due for payment; and
 - (b) the Supplier shall be entitled to:
 - (i) cancel or suspend any further deliveries of Deliverables to the Customer under any order;



(II) sell or otherwise dispose of the Deliverables and/or any goods and/or services which are the subject of any order by the Customer, whether or not appropriated thereto, and, where applicable, apply the proceeds of sale to the Unpaid Amount;

(III) where applicable, charge the Customer interest (both before and after any judgment) on the Unpaid Amount, at the rate of in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended from time to time of which is currently 8% above the Bank of England's base rate;

(IV) appropriate any payment made by the Customer to such of the Deliverables (or goods and/or services supplied under any other order) as the Supplier may think fit; and

(V) by notice to the Customer unilaterally vary payment terms for future Contracts;

(c) the Customer shall indemnify the Supplier for all reasonable Costs that are reasonably incurred by the Supplier (either directly or indirectly or by a third party) in seeking or securing payment of any Unpaid Amount or otherwise pursuing any claim for damages for breach of this Contract. This indemnity shall apply whether or not the Customer has been negligent or at fault. Nothing in this Condition 4.6(c) shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity. For the avoidance of doubt, the limitations set out in Condition 12, do not apply to the indemnity in this Condition 4.6(c).

4.7 Unless otherwise agreed in writing by the Supplier, all queries from the Customer regarding any invoice must be received prior to its Due Date.

5. Deliverables

5.1 The Customer and the Supplier shall meet as and when deemed reasonably necessary by the Supplier to discuss matters relating to the Deliverables.

5.2 Where any design is applied to the Deliverables either at the Customer's request or to the Customer's specification, the Customer shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim for infringement of any Intellectual Property Rights of any person which results from the Supplier's use of the Customer's specification.

5.3 Acceptance of any design applied to the Deliverables in accordance with Condition

5.2 shall take place in accordance with the provisions set out in the Contract Details.

6. Changes to the Deliverables

6.1 If either party wishes to change the scope or execution of the Deliverables by way of variation, concession, permit or otherwise, it shall submit details of the requested change to the other in writing.

6.2 If either party requests a change to the scope or execution of the Deliverables, the Supplier shall, within a reasonable time, and where reasonably practicable, provide a written estimate to the Customer of:

(a) the likely time required to implement the change;

(b) any variations to the Price arising from the change;

(c) the likely effect of the change on the Contract Details; and

(d) any other impact of the change on the Conditions.

6.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to the Price and the Contract Details.

6.4 The Supplier may, from time to time and without notice, change the Deliverables in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the Price for the Deliverables.

7. Packaging

7.1 Where set out in the Contract Details the Supplier may require the Customer to return packaging material for the Deliverables to the Supplier at the Customers' cost.

8. Risk and Title

8.1 Risk of damage to or loss of the Deliverables shall pass to the Customer at the time of delivery to or collection from (as applicable) the Delivery Location other than where the Customer wrongfully fails to take delivery in which case, risk shall pass to the Customer at the time when the Supplier has tendered delivery of the Deliverables.

8.2 Notwithstanding delivery and the passing of risk in the Deliverables, or any other provision of these Conditions, title in the Deliverables shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of:

(a) Until such time as title in the Deliverables passes the Price and any Additional Charges; and

(b) all other sums payable by the Customer to the Supplier for which payment is then due.

8.3 to the Customer:

(a) the Customer shall hold the Deliverables as the Supplier's fiduciary agent and bailee, and shall keep the Deliverables separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Supplier's property, but shall be entitled to resell or use the Deliverables in the ordinary course of its business;

(b) if Deliverables are damaged or destroyed by an insured risk prior to the same being paid for by the Customer, the Customer shall receive the proceeds of any such insurance as trustee for the Supplier;

(c) the Supplier shall be entitled at any time to require the Customer to deliver up the Deliverables to the Supplier and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or third party where the Deliverables are stored and mark identify and repossess the Deliverables and the Customer grants the Supplier an irrevocable license to enter any premises of the Customer for such purposes; and

(d) the Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Deliverables which remain the property of the Supplier, but if the Customer does so all monies owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

8.4 Title in the Tooling shall not pass to the Customer and shall remain with the Supplier at all times.

9. Delivery

9.1 The Supplier shall reasonably endeavour to deliver the Deliverables on the Delivery Date to the Delivery Location, subject to the availability of the Supplier's employees, agents and sub-contractors and the availability and delivery of the Deliverables. The time for delivery shall not be of the essence.

9.2 The Supplier shall have the right to deliver Deliverables ordered in instalments.

9.3 Failure by the Supplier to deliver any one or more of the instalments on any Delivery Date or any claim by the Customer in respect of the Deliverables delivered in any one or more instalments shall not entitle the Customer either to treat the Contract as a whole as repudiated or to reject or refuse to take delivery of any of the Deliverables delivered in any other instalment.

9.4 If the Customer fails to take delivery of the Deliverables (otherwise than by reason of the Supplier's fault) or fails to give the Supplier adequate instructions for delivery then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:

(a) store the Deliverables until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and redelivery as an Additional Charge; or

(b) sell the Deliverables at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the Price and any Additional Charges under the Contract.

9.5 The Customer shall accept delivery of the Deliverables at the Delivery Location and shall, where applicable, promptly load or unload the Deliverables (as applicable). For the avoidance of doubt, where the Supplier is responsible for delivery to the Customer, the Supplier or the Supplier's carrier shall not be responsible for unloading the Deliverables and the Customer shall be charged for wasted time at the Supplier's standard rate and any other expenses incurred by the Supplier:

(a) for any delay in unloading the Deliverables; and/or

(b) for each repeat delivery where the Supplier or Supplier's carrier leaves the Delivery Location and subsequently returns to the Delivery Location with the Deliverables; and/or

(c) as a result of the Customer's inability or unwillingness to accept delivery of, or to collect, the Deliverables.

9.6 The Customer shall notify the Supplier of any shortfall of Deliverables delivered within 7 day of delivery, or in the event of non-delivery of a consignment, within 7 day of the Delivery Date. Notification must be by telephone followed by written confirmation by way of email within 2 Working Days. Where the Supplier is unable to demonstrate that full delivery has been made then the Supplier shall be entitled to make good any shortage or non-delivery of a consignment of the Deliverables. Where it does not do so, it shall notify the Customer in writing of its decision and the Price may be adjusted on a pro-rata basis.

9.7 Upon delivery the Customer will be required to sign the Supplier's, or the Supplier's carrier's delivery note as conclusive evidence that delivery was made and of the quantity of Deliverables received by the Customer.

10. Acceptance

10.1 Acceptance of the Deliverables shall take place upon the signing of the Supplier's delivery note in accordance with Condition 9.7 or upon physical receipt and delivery of the Deliverables to the Customer as confirmed to the Supplier by its carrier.

11. Customer Obligations

11.1 The Customer warrants that:

(a) it will co-operate with the Supplier in all matters relating to the Deliverables;

(b) it will provide where applicable, for the Supplier, its employees, agents and sub-contractors, in a timely manner and at no charge, access to the Delivery Location as requested by the Supplier and as necessary to enable the Supplier to perform its obligations under these Conditions;

(c) it will provide, in a timely manner, such Input Materials as the Supplier may request and ensure that it is accurate in all material respects;

(d) it will carry out all actions specified in the Contract Details by the times and dates set out therein;

(e) where applicable, it shall take all reasonable precautions to ensure the health and safety of the Supplier, its employees, agents, or sub-contractors whilst on the Delivery Location and will inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any Delivery Location;

(f) that all services, including without limitation, electricity conduits, to the Delivery Location are in good working order and suitable for the purposes for which they are used in relation to the Deliverables and conform to all relevant United Kingdom standards or requirements; and

(g) it will obtain before the date on which the Deliverables are to start and maintain all necessary licenses and consents and comply with all relevant legislation in relation to the Deliverables and the use of the Input Materials.

11.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Supplier shall not be liable for any costs, expenses, losses or charges sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

11.3 Notwithstanding the provisions of Condition 11.2, the Supplier may charge the Customer as an Additional Charge for any additional reasonable costs and expenses incurred by the Supplier caused by the Customer's instructions, failure to provide instructions, or failure to comply with Condition 11.1.

11.4 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of 12 months after the termination of the Contract, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier in the provision of the Services.

11.5 Any consent given by the Supplier in accordance with Condition 11.4 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee or subcontractor.

12. Warranties and Liability

12.1 Subject to the Conditions set out below the Supplier warrants that for such period as set at the Contract Details the Deliverables will:

(a) be free from material defects in quality or workmanship; and

(b) comply with any specification set out in the Contract Details. For the avoidance of doubt the Supplier may from time to time make changes in the specification of the Deliverables which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality of the Deliverables; and

(c) be performed by the Supplier with reasonable care and skill; subject to the Customer complying with the obligations set out in Condition 11.1.

12.2 Subject as expressly provided in these Conditions, all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. In particular, the Supplier makes no warranty as to the fitness of the Deliverables for any particular purpose even if that purpose is stated in the Customer's order. This exclusion includes recommendations or advice from the Supplier to the Customer relating to a specific enquiry. The Customer must satisfy itself as to the fitness for the purpose for which the Deliverables are intended.

12.3 The Supplier shall not be liable for a breach of any of the warranties in Condition 12.1 unless:

(a) the Customer gives written notice by email of the defect to the Supplier and if, where the Supplier is responsible for delivery, the defect is as a result of damage in transit gives written notice by email to the Supplier within 1 Working Day of receipt specifying the details of the defect and Delivery Date. In the event of a defect which is not apparent on delivery the Customer shall inform the Supplier in writing by way of email of such defect immediately on discovery of the defect but in any event within 5 Working Days of the Delivery Date; and

(b) the Supplier is given a reasonable opportunity after receiving the notice of examining the Deliverables and the Customer complies with any request from the Supplier to return Deliverables to the Supplier's place of business at the Customer's cost for examination to take place



there. The reasonable cost of packaging and carriage of returned Deliverables incurred by the Customer will be reimbursed by the Supplier if the Deliverables are found to be in breach of the warranties set out in Condition 12.1.

12.4 The Supplier shall not be liable for breach of warranty under Condition 12.1 if:

- (a) the Customer makes any further use of such Deliverables after giving notice under Condition 12.3(a); or
- (b) the defect arises because the Customer has failed to follow the Supplier's or manufacturer's instructions (whether oral or in writing) as to the storage, installation, commissioning, proper use and maintenance of the Deliverables or (if there are none) good trade practice; or
- (c) the Customer alters or repairs the Deliverables without the written consent of the Supplier.

12.5 Where any valid claim in respect of the Deliverables is made by the Customer the Supplier shall be entitled at its option to:

- (a) replace, or repair or correct the Deliverables (or the part in question) found not to conform to warranty at the Supplier's cost;
- (b) re-perform the relevant part of the Deliverables found not to conform to warranty at the Supplier's cost; or
- (c) at the Supplier's sole discretion, refund to the Customer the Price (or a proportionate part of the Price) of the relevant part of the Deliverables found not to conform to warranty, and subject to Condition

12.7 the Supplier shall have no further liability to the Customer.

12.6 Subject to Condition 12.7, the Supplier's liability in connection with the sale and supply of Deliverables shall be as follows:

- (a) in respect of any loss of profits, loss of business, loss of goodwill, loss of anticipated savings or loss of use, the Supplier's liability shall be nil;
- (b) for any type of consequential, special or indirect loss or damage, the Supplier's liability shall be nil; and
- (c) in respect of all direct loss (whether in contract, tort or otherwise) the Supplier's total aggregate liability under the Contract shall not exceed the lowest cost of replacing the Deliverables with the same or nearest comparable goods and/or services at the time of the claim as determined by the Supplier other than where such liability is expressly covered by the Supplier's insurance in which case the limits set out therein shall apply.

12.7 Nothing in these Conditions seeks to limit the Supplier's liability for personal injury or death caused by the Supplier's negligence in respect of which the Supplier's liability shall be unlimited.

12.8 Subject to Condition 12.7 the Supplier shall have no liability under these Conditions or otherwise if the Deliverables have not been paid for by the Due Date.

12.9 Any claim by the Customer under this Condition 12 in respect of any Deliverables shall not entitle the Customer to withhold or delay payment in respect of any other Deliverables in respect of which no such claim has been made whether or not those Deliverables form part of the same consignment.

13. Intellectual Property Rights

13.1 The Customer acknowledges that the Supplier is the owner or the licensee of all Intellectual Property Rights in the Deliverables. Under no circumstances shall any of the Intellectual Property Rights transfer to the Customer other than as expressly stated within these Conditions and/or the Contract Details.

13.2 The Supplier grants to the Customer a non-exclusive licence (without the right to sublicense) to use any Intellectual Property Rights in the Deliverables for the purpose of making reasonable use of the Deliverables.

13.3 The Customer shall provide the Input Materials to the Supplier for the purpose of the provision of Deliverables and shall grant to the Supplier a non-exclusive licence to use any Input Materials for the purpose of providing the Deliverables.

13.4 The Customer shall indemnify and hold the Supplier harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by, the Supplier as a result of or in connection with any alleged or actual infringement, whether or not under English Law, of any third party's Intellectual Property Rights or other rights arising out of or the use of the Input Materials.

14. Protection of Confidential Information

14.1 Notwithstanding termination of the Contract, each party ('Receiving Party') shall keep the Confidential Information of the other party ('Supplying Party') confidential and secret, the Receiving Party shall only use the Confidential Information of the Supplying Party as necessary to supply of the Deliverables (in the case of the Supplier) or as necessary for the purpose of making reasonable use of the Deliverables (in the case of the Customer) and for performing the Receiving Party's obligations under the Contract. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this Condition 14, and ensure that they meet such obligations.

14.2 The obligations of Condition 14.1 shall not apply to any information which:

- (a) was known or in the possession of the Receiving Party before it was provided to the Receiving Party by the Supplying Party;
- (b) is, or becomes, publicly available through no fault of the Receiving Party;
- (c) is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
- (d) was developed by the Receiving Party (or on its behalf) without direct access to, or use or knowledge of the Confidential Information supplied by the Supplying Party; or
- (e) is required to be disclosed by order of a court of competent jurisdiction.

14.3 This Condition 14 shall survive termination of the Contract.

15. Termination and Consequences

15.1 Without prejudice to any other remedies or rights whether under the Contract or otherwise, the Supplier may terminate the Contract at any time by written notice to the Customer and the notice taking effect as specified in the notice if:

- (a) the Customer commits a material or persistent breach of any of these Conditions, and (if such a breach is remediable), fails to remedy that breach within 14 days of being notified in writing; or
- (b) the Customer fails to pay any sum due under the Contract by the Due Date, including any interest accrued, in full cleared funds in accordance with Condition 4; or
- (c) the Customer suspends, or threatens to suspend, payment of its debts or makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (d) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of any property or assets of the Customer; or

(e) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

(f) there is a change in Control of the Customer; or

(g) the Supplier reasonably apprehends that any of the events mentioned above is about to occur and notifies the Customer accordingly.

15.2 For the purposes of Condition 15.1(a) a breach shall be considered capable of remedy if the Customer can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

15.3 Upon termination of the Contract for any reason:

(a) the Customer shall immediately pay to the Supplier all outstanding invoices, and in respect of any part of the Price and Additional Charges or other sums payable by the Customer but for which no invoice has been submitted, the Supplier may submit an invoice which shall be payable immediately on receipt; and

(b) each party shall return, delete or destroy all Confidential Information and all other information which has been provided to it by the other party belonging to that other party in whatever medium in accordance with the instructions of that other party; and

(c) any licence granted by these Conditions shall terminate, in particular those granted under Condition 13; and

(d) the accrued rights and remedies of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

16. Force Majeure

16.1 The Supplier shall not be liable to the Customer or be deemed to be in breach of this Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Supplier's reasonable control such as (but without limitation) any strike, lock-out or other form of industrial action, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors or inability to procure materials required for performance of the Contract.

16.2 The Supplier shall promptly notify the Customer in writing when any such circumstances set out in Condition 16.1 above cause a delay or failure in performance and when they cease to do so. The Supplier may terminate the Contract by written notice to the Customer where such circumstances continue for such period of time that the Supplier deems to be material in the circumstances.

17. Notices

17.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any notice:

(a) sent by post shall be deemed served on the next Working Day following posting where the notice is sent and received within the United Kingdom, or 7 Working Days following posting where the notice is sent and/or received outside of the United Kingdom;

(b) delivered personally shall be deemed served at the time of personal delivery, provided the same occurs on a Working Day; and

(c) sent by email shall be deemed served at the time of transmission provided that the transmission occurs on a Working Day and a confirmatory copy of the email is sent by post within 24 hours of transmission of the email.

17.2 To prove service it shall be sufficient to show that the email was

transmitted to the email address of the other party or that the envelope containing the notice was properly addressed and posted.

18. Entire Agreement

18.1 Each Contract constitutes the entire agreement between the parties in relation to its subject matter, supersedes any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

19. No Partnership or Agency

19.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for or to bind another party in any way.

20. Further Assurance

20.1 Each party to the Contract shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of the Contract or to make it easier to enforce.

21. Assignment

21.1 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any manner with all or any of its rights or obligations under the Contract.

22. Severance

22.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions shall remain in full force and effect.

23. Waiver

23.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by the Supplier to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

24. Cumulative Remedies

24.1 All rights and remedies available to either of the parties under the terms of the Contract or under the general law are to be cumulative, and no exercise by either of the parties of any such right or remedy is to restrict or prejudice the exercise of any other right or remedy granted by the Contract or otherwise available to that party.

25. Third Party Rights

25.1 A person who is not a party to the Contract will not have any rights under any term of the Contract.

26. Governing Law and Jurisdiction

26.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England.