

STANDARD TERMS AND CONDITIONS OF SALE OF GOODS AND SERVICES (BUSINESS TO BUSINESS)

1 Definitions and Interpretation

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

"**Applicable Law**" means all national, supranational, foreign or local laws (including case law), legislation, statutes, statutory instruments, rules, regulations, edicts, by-laws or directions or guidance from government or governmental agencies including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law together with any industry codes of practice in effect from time to time;

"**Business Day**" means any day which is not a Saturday, Sunday or a bank or public holiday in any part of the United Kingdom;

"**Change of Control**" means that a person who had Controlled any person ceases to do so, or another person acquires Control of such a person;

"**Company**" means the entity identified as the supplier of the Goods and/or Services on the acknowledgement of order and who is a company within the Group of Survitec Group Limited (Registered No. 00905173) whose registered office is at 1-5 Beaufort Road, Birkenhead, Merseyside CH41 1HQ;

"**Confidential Information**" means the provisions of the Contract and all information which is secret or otherwise not publicly available (in both cases in its entirety or in part) including commercial, financial, marketing or technical information, know-how, processes of production and technology, trade secrets, software or business methods in all cases whether disclosed orally or in writing before or after the date of the Contract, together with any reproductions of such information in any form or medium or any part(s) of such information (and "**confidential**" means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available);

"**Contract**" means any order and acknowledgement of order between the Company and the Customer for the sale of Goods and/or provision of Services, incorporating these Conditions;

"**Control**" means that a person possesses, directly or indirectly, the power to direct or cause the direction of the affairs and policies of the other person (whether through the ownership of share capital, possession of voting power, ability to appoint directors, contract or otherwise) and "**Controls**" and "**Controlled**" shall be interpreted accordingly;

"**Customer**" means the person(s), firm or company identified as the customer on the

acknowledgement of order who purchases the Goods and/or Services from the Company;

"**Export Controls and Sanctions Laws**" means any applicable export control, trade or economic sanctions, embargo or similar laws, regulations, rules, licences, orders or requirements including without limitation those of the U.S. and the EU;

"**Force Majeure**" means any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) under the Contract including act of God, fire, flood, lightning, compliance with any law or governmental order, rule, regulation or direction, (including any import or transit laws, Export Controls and Sanctions Laws and customs processes and procedures) war, revolution, act of terrorism, riot or civil commotion, strikes, lock-outs or other industrial action, default or delays of suppliers or sub-contractors, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services;

"**Goods**" means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them);

"**Group**" means in relation to any company, that company and every subsidiary or holding company of that company or a subsidiary or holding company of any such subsidiary or holding company (in each case from time to time) and the terms "**subsidiary**" and "**holding company**" shall have the meanings given to them by Section 1159 Companies Act 2006;

"**Incoterms**" means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2010;

"**Intellectual Property**" means any patent, copyright, right in databases, moral right, right in design, right in software, trademark, service mark or trade name, image right, right in an invention, right relating to passing off, domain name, know-how, utility model, and all similar or equivalent rights in each case whether registered or not including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the United Kingdom and all other countries in the world;

"**Services**" means any Services agreed in the Contract to be provided to the Customer by the Company.

1.2 Drafting Conventions

(a) References to a gender include every gender, reference to persons includes an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity and reference to the singular include the plural and vice versa as the

context admits or requires.

- (b) Headings to Conditions are for ease of reference only and shall not affect the interpretation or construction of these Conditions.
- (c) References to any statute or statutory provision shall be deemed to include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification) whether made before or after the date of the Contract.
- (d) The words "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

2 Basis of Contract

- 2.1 Subject to any variation under Condition 2.2 the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).
- 2.2 Any variation to these Conditions and any representations about the Goods or Services shall have no effect unless such variation is expressly agreed in writing by the Company, refers specifically to the Contract and is executed by a duly authorised representative of the Company.
- 2.3 Any quotation or estimate made by the Company (including any quotation or estimate provided in a company catalogue, brochure or website) is given subject to these Conditions. Without prejudice to the Company's right not to accept an order, quotations and/or estimates shall be valid for 14 days from date of issue.
- 2.4 Each order for Goods and/or Services submitted by the Customer to the Company shall be deemed to be an offer by the Customer to purchase Goods and/or Services subject to these Conditions.
- 2.5 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company commences performance of the Services, manufacture of the Goods, their appropriation to Customer's order or despatch of the Goods to the Customer. Any order shall be accepted entirely at the discretion of the Company, at which point and on which date the Contract shall come into existence.
- 2.6 It is the Customer's obligation to ensure that the terms of its order and any applicable design, drawings, specification and any other data (whether or not supplied by the Company or the Customer) in relation to the Goods and/or

Services are complete and accurate.

- 2.7 The Customer can only cancel an order (or any part of an order) which the Company has already accepted, with the Company's prior written agreement. The Company is not bound to agree to any such cancellation and may complete such order even if the Customer purports to cancel it.
 - 2.8 If the Company's performance of the Contract is suspended or delayed through the Customer's default (including lack of, incomplete or incorrect instructions or refusal to collect or accept delivery of the Goods), the Company shall be entitled to and the Customer shall immediately make payment in accordance with the Contract for any part of the Services which has already been performed and for any part of the Goods which were already despatched to the Customer or were ready for despatch or were being manufactured prior to the suspension or delay and for any other additional costs that the Company incurs including storage, insurance and interest as a result of such suspension or delay.
- ## **3 Description of the Goods and Services**
- 3.1 The quantity, quality, description of and any specification for the Goods or Services shall be set out in the Company's acknowledgement of order or, in its absence, any written quotation or estimate expressly sent by the Company to the Customer.
 - 3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions, details or illustrations contained in the Company's catalogues, brochures or websites are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them and they will not form part of the Contract unless otherwise agreed in writing by the Company.
 - 3.3 The Company reserves the right without liability to the Customer to make any changes in the specification of the Goods or Services which are required to conform with any Applicable Laws or which do not materially affect the quality or performance of the Goods or Services.
 - 3.4 The Company's employees or agents are not authorised to give any advice, recommendations or representations concerning the Goods and/or Services which are not made in any visual or written sales literature issued by the Company (including any literature published on the internet) unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such advice, recommendations and/or representations which are not so confirmed.
 - 3.5 The Customer acknowledges that from time to time the Customer may supply the Company with designs, drawings, specifications and other data to enable the Company to provide the Goods or

perform the Services, and that the Company places particular reliance upon such designs, drawings, specifications and data.

3.6 In addition to any other remedy available to the Company, the Customer shall indemnify, defend and hold harmless the Company, members of the Company's Group and their respective directors, officers, employees, sub-contractors and agents in full and on demand (with no duty to mitigate their loss) from and against all direct or indirect liabilities, claims, demands, actions, proceedings, damages, losses, costs and expenses (including legal and other professional advisers' fees), interest, and penalties made against or incurred or suffered by any of them howsoever arising whether wholly or in part resulting directly or indirectly from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the Contract:

- (a) the manufacture and sale of the Goods or performance of the Services by the Company in accordance with the Customer's designs, drawings, specifications or other data or information furnished or instructions given by the Customer; and/or
- (b) any claims that any Intellectual Property or Confidential Information or other exclusive right of any third party has been infringed through the manufacture, sale or use of the Goods or performance of the Services (save to the extent the same have been supplied in accordance with specifications or designs of the Company).

4 Delivery and Acceptance of Goods

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place EXW (at the Company's relevant place of business set out in the Company's acknowledgement of order) Incoterms 2010 and the Customer shall take delivery of the Goods within 14 days of the Company giving the Customer notice that the Goods are ready for delivery.

4.2 Any dates and times specified by the Company for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence. If no dates are so specified, delivery will be within a reasonable time.

4.3 If for any reason the Customer does not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then:

- (a) the Goods will be deemed to have been delivered on the 15th day after the Company has given notice to the Customer pursuant to Condition 4.1, with risk passing to the Customer (including loss or damage caused by

the Company's negligence); and

(b) the Company may:

- (i) store the Goods until actual delivery whereupon the Customer will be liable for all related costs and expenses (including storage and insurance); or
- (ii) sell the Goods at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge the Customer for any shortfall below the Contract price.

4.4 The Company shall be entitled at its discretion to make delivery of the Goods by instalments and to invoice the Customer for each instalment individually. Each instalment shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated or to refuse to accept subsequent instalments.

4.5 The Customer shall be deemed to have accepted the Goods as being in accordance with the Contract unless:

- (a) within 14 days of the date of delivery of the Goods, the Customer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Goods within 14 days); or
- (b) the Customer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract within a reasonable time where the defect or failure would not be so apparent within 14 days of the date of delivery,

failing which the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

4.6 The Company shall not be obliged to supply test certificates unless the Customer requests such certificates a reasonable time in advance of delivery and the Company shall be entitled to charge a reasonable fee for each such certificate provided.

4.7 The Company shall only be liable for any non-delivery of Goods (even if caused by the Company's negligence) if the Customer gives written notice to the Company within 14 days of the date when the Goods would, in the ordinary course of events, have been delivered.

4.8 If the Customer gives notice to the Company in accordance with Condition 4.7, the liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable

time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by an event of Force Majeure, the Customer's failure to provide the Company with adequate delivery instructions for the Goods or any relevant instructions related to the supply of the Goods.

5 Passing of Risk and Legal Title

- 5.1 The Goods shall be at the risk of the Customer from the time of delivery.
- 5.2 Full legal, beneficial and equitable title to and property in the Goods shall remain vested in the Company (even though they have been delivered and risk has passed to the Customer) until payment in full, in cleared funds, for all the Goods has been received by the Company.
- 5.3 Until full legal, beneficial and equitable title to and property in the Goods passes to the Customer:
 - (a) the Customer shall hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) the Customer shall:
 - (i) store the Goods at its premises in a proper manner in conditions which adequately protect and preserve the Goods;
 - (ii) insure the Goods, without any charge to the Company;
 - (iii) not tamper with any identification upon the Goods or their packaging; and
 - (iv) ensure that the Goods are stored separately from any other goods (whether or not supplied by the Company) and are clearly identifiable as belonging to the Company; and;
 - (c) the Company may at any time, on demand and without prior notice, require the Customer to deliver the Goods up to the Company and the Company (or the Company's agents or employees) may enter the premises where the Goods are situated (whether or not owned or controlled by the Customer) to repossess and resell the Goods if any of the events specified in Condition 18.1 occurs or if any sum due to the Company from the Customer under the Contract or on any other account or under any other contract is not paid when due;
 - (d) for the purposes of this Condition 5 the Company, its employees, agents and sub-contractors will be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Customer and/or any other location where any of the Goods are situated at any time without prior notice; and
 - (e) the Company shall be entitled to maintain an action against the Customer for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to the Customer.

- 5.4 The Company's rights and remedies set out in this Condition 5 are in addition to and shall not in any way prejudice, limit or restrict any of the Company's other rights or remedies (whether contractual or non-contractual in nature) under or in connection with the Contract.

6 Provision of Services

- 6.1 Where the Company is to perform Services at the Customer's premises, the Customer shall procure safe access to the premises and the provision of adequate power, lighting, heating and other such facilities, supplies, materials or equipment for the Company's employees or agents in accordance with the demands of any Applicable Laws and as the Company shall reasonably require.
- 6.2 The Company shall provide all Services using reasonable care and skill.
- 6.3 The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.4 The Services will be deemed to be completed and the relevant element of the Contract price to be due and payable forthwith:
 - (a) when the Company issues a written notice to the Customer confirming such completion; or
 - (b) if the Company is available to perform the Services but is prevented from doing so by reason of:
 - (i) the lack of appropriate assistance from the Customer; and/or
 - (ii) the condition of the Customer premises or site at which the Services are to be provided and/or the facilities at or the services available therein at the time agreed for the provision of the Services.
- 6.5 Any dates for the performance of the Services are intended to be an estimate only and time for performance shall not be of the essence. If no dates are so specified, performance of the Services shall be within a reasonable time.
- 6.6 In performing the Services, the Company shall operate as, and have the status of, an independent contractor and shall not operate or have the status of agent, employee or representative of the Customer.
- 6.7 The Company may sub-contract performance of any of the Services (or part thereof) to any person, firm, corporation or organisation provided that the Company shall remain responsible to the Customer for the performance of such Services in accordance with the terms of the Contract.
- 6.8 Company reserves the right to carry out screening and background checks on Customer prior to performing the Services and at any time during the performance of the Services. Customer shall provide all reasonable assistance to Company in relation to such checks.

7 Confidentiality

- 7.1 The Customer shall keep and procure to be kept secret and confidential all Confidential Information belonging to the Company disclosed or obtained as a result of the relationship of the parties under the Contract and shall not use nor disclose the same save for the purposes of the proper performance of the Contract or with the prior written consent of the Company.
- 7.2 The Customer may disclose Confidential Information belonging to the Company to an employee, consultant or agent to the extent necessary for the performance of the Contract provided that such disclosure is subject to obligations equivalent to those set out in these Conditions. The Customer shall procure that any such employee, consultant or agent complies with such obligations. The Customer shall be responsible to the Company in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.
- 7.3 The obligations of confidentiality in this Condition 7 do not extend to any Confidential Information which the Customer can show:
- is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under the Contract; or
 - was in its written records prior to the date of the Contract and not subject to any confidentiality obligations; or
 - was or is independently disclosed to it by a third party entitled to disclose the same; or
 - the parties agree in writing is not Confidential Information or may be disclosed; or
 - is required to be disclosed under any Applicable Law, or by order of a court or governmental body or authority of competent jurisdiction.
- 7.4 The supply of Goods and/or Services under the Contract shall not constitute a licence for the Customer to use the Confidential Information for any purpose other than that for which the Confidential Information is provided to the Customer.
- 7.5 On expiry or termination of the Contract (for whatever reason) the Customer shall promptly return to the Company or dispose of in accordance with the Company's instructions all Confidential Information and other data and documents and copies thereof disclosed or supplied to the Customer pursuant to or in relation to the Contract and shall certify to the Company when the same has been completed.

8 Data Protection

- 8.1 For the purpose of this Condition 8, "Data Protection Laws" shall mean means the General Data Protection Regulation (EU) 2016/679 ("GDPR") and any associated regulations or

instruments and any other data protection laws, regulations, regulatory Requirements, guidance and codes of practice applicable to the Company's provision of the Goods and/or Services, including but not limited to the Data Protection Act 2018.

- 8.2 When the Company collects and processes any personal data of Customer under the Contract, Company shall do so as data controller. Company shall comply with all the requirements of the Data Protection Laws applicable to data controllers in connection with the Contract.
- 8.3 Further information about Customer's rights in relation to Company's processing of their personal data can be found in the Privacy Notice (available here <http://survitecgroup.com/about-us/our-privacy-policy/>) Company will provide a copy of Company's Privacy Notice to Customer on request.
- 8.4 For the purpose of performing the Contract, Company may disclose Customer's personal data to other members of the Company Group using the appropriate safeguards as required by Data Protection Laws.

9 Contract Price

- 9.1 The price for the Goods and/or Services shall be the price set out in the Contract or, if no price is quoted, the price set out in the Company's price list and in the case of Goods and/or Services supplied and or/provided for export from the United Kingdom, the Company's export price list in each case published on the date of delivery or deemed date of delivery of the Goods, or completion or deemed completion of performance of the Services.
- 9.2 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company such as:
- any increase in the costs of labour, materials, or other costs of manufacture or supply (including any increase in any duties or taxes which may be payable by the Company in the performance of the Contract);
 - any change in the quantities of the Goods requested by the Customer; or
 - any change in the delivery dates of the Goods or Services requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 9.3 Unless otherwise agreed in writing by the Company, the price for the Goods and/or Services shall be exclusive of any value added tax or other similar taxes or levies and all costs or charges in relation to packaging (other than standard packaging), labelling, loading, unloading, carriage, freight and insurance, together with

export and/or import charges, taxes or duties all of which amounts the Customer shall pay, where appropriate, in addition when it is due to pay for the Goods and/or Services.

9.4 The price for any Services does not include the cost of any Goods which are supplied (subject to the prior written agreement of the Customer) by the Company in the course of the performance of such Services, the price of which shall be payable by the Customer in addition when it is due to pay for the relevant Services.

9.5 The Company shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Company engages in connection with the performance of the Services, including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Company for the performance of the Services.

10 Payment Terms

10.1 The Company may invoice for the price of the Goods on or at any time after completion of delivery. The Company may issue an invoice for the price of the Services on or at any time after performance of the Services.

10.2 The Customer shall pay all invoices in full and in cleared funds within 30 days of the date of the invoice. Time for payment shall be of the essence.

10.3 All payments shall be in the currency stated in the Company's acknowledgement of order by electronic transfer to the Company's bank account as set out in the Contract, or such other bank account as the Company may from time to time notify the Customer with any applicable charges on such payments being at Customer's expense. No payment shall be deemed to have been received until the Company has received payment in full and in cleared funds.

10.4 Notwithstanding any other provision, all payments payable to the Company under the Contract shall become due immediately upon termination of this Contract for whatever reason.

10.5 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise.

10.6 If any sum due from the Customer to the Company under the Contract or any other contract is not paid on or before the due date for payment then all sums then owing by the Customer to the Company shall become due and payable immediately and, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

- (a) set-off such sums against any payments due to the Customer from the Company under or in relation to this or any other Contract or

agreement which is or has been entered into between the Customer and a member of the Company's Group;

- (b) cancel or suspend its performance of the Contract or any order including suspending deliveries of the Goods and suspending provision of the Services until arrangements as to payment or credit have been established which are satisfactory to the Company;
- (c) require the Customer to pay for Goods prior to their despatch or collection from the Company's place of business;
- (d) suspend performance of Services remaining to be carried out; and
- (e) charge the Customer interest calculated on a daily basis on all overdue amounts (both before and after judgement) at the rate of five per cent (5%) per annum above the Bank of England's base lending rate from time to time from the due date for payment until payment is made in full.

11 Warranty of Quality of Goods and Services

11.1 If the Customer establishes to the Company's reasonable satisfaction that there is a material defect in the materials or workmanship of the Goods manufactured or there is some other failure by the Company in relation to the conformity of the Goods with the Contract or the Services have not been performed with reasonable care and skill, then the Company shall at its option, at its sole discretion and within a reasonable time;

- (a) repair or make good such defect or failure in such Goods or Services free of charge to the Customer (including all costs of transportation of any Goods or materials to and from the Customer for that purpose);
- (b) replace such Goods with Goods which are in all respects in accordance with the Contract or re-perform such Services; or
- (c) issue a credit note to the Customer in respect of the whole or part of the Contract price of such Goods or Services as appropriate having taken back such Goods or materials relating to such Goods or Services;

subject, in every case, to the remaining provisions of this Condition 11.

11.2 Condition 11.1 shall not apply unless the Customer:

- (a) notifies the Company in writing of the alleged defect in the Goods or Services within 7 days of the time when the Customer discovers or ought to have discovered the defect and in any event within:
 - (i) 12 months of delivery for any Crewsaver CWX lifejackets;
 - (ii) 3 years of delivery for any other lifejackets;
 - (iii) 12 months of the delivery for all other Goods or parts thereof; and
 - (iv) 3 months of performance of Services,

- or such other periods as may be agreed by the Company in writing; and
- (b) affords the Company a reasonable opportunity to access the Customer's premises in order to inspect the relevant Goods or the location at which the Services were performed; and
 - (c) if so requested by the Company and where it is reasonable to do so, promptly returns to the Company or such other person nominated by the Company a sample of the Goods or materials relating to the Services within 14 days, carriage paid by the Customer, for inspection, examination and testing.
- 11.3 If the Company elects to replace the Goods or re-perform the Services pursuant to Condition 11.1, the Company shall deliver the replacement Goods to or re-perform the Services for the Customer at the Company's own expense at the address to which the defective Goods were delivered and the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in the Customer) re-vest in the Company and the Customer shall deliver up to the Company the defective Goods which are being replaced or materials relating to the previously performed Services.
- 11.4 The Company shall be under no liability under the warranty at Condition 11.1 above:
- (a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;
 - (b) in respect of any latex seals on the Goods once the Goods have been used by the end user;
 - (c) if the total price for the Goods or Services has not been paid by the due date for payment;
 - (d) for any parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company to the extent that they are assignable by the Company to the Customer;
 - (e) for any Goods manufactured or appropriated to the Contract or for any Services provided in accordance with any designs, drawings, specifications, instructions or recommendations (in each case, as appropriate) issued by the Customer;
 - (f) in respect of any type of defect, damage or wear specifically excluded by the Company by notice in writing;
 - (g) if the Customer makes any further use of the Goods after giving notice in accordance with Condition 11.2;
 - (h) for any installation, alteration, repair and/or servicing of the Goods by persons other than those approved by the Company; or
 - (i) in the event the Customer has not sent use, maintenance and servicing instructions for the relevant Goods at the point of sale to the end user.
- 11.5 The liability of the Company under this Condition 11 shall in no event exceed the purchase price of the relevant Goods or Services and performance of any one of the above options shall constitute an entire discharge of the Company's liability under this warranty
- 11.6 This is the sole and exclusive warranty given by the Company with respect to the Goods or Services, and is in lieu of and excludes all other warranties, express or implied, arising by operation of law or otherwise, including merchantability and fitness for a particular purpose. No person is authorised to give any warranties on behalf of the Company or to assume any other liability on behalf of the Company in connection with the Goods or Services unless given in writing and signed by an authorised representative of the Company.
- 12 Customer Obligations**
- 12.1 The Customer shall comply at all times with the written instructions and all written guidelines issued from time to time attached to the Goods concerning their storage, application, installation, repair, maintenance and use. The Customer shall refer its employees, contractors and its customers to such instructions and guidelines and shall ensure that they comply with them. The Customer shall ensure that the Goods are only installed, repaired and/or serviced by those persons approved by the Company.
- 12.2 In addition to any other remedy available to the Company, the Customer shall indemnify, defend and hold harmless the Company, the members of the Company's Group, and their respective directors, officers, employees, sub-contractors and agents in full and on demand (with no duty to mitigate their loss) from and against all direct or indirect liabilities, claims, demands, actions, proceedings, damages, losses, costs and expenses (including legal and other professional advisers' fees), interest, and penalties made against or incurred or suffered by any of them howsoever arising whether wholly or in part resulting directly or indirectly from any claims by any officer, employee, agent, sub-contractor, visitor, passenger or other third party arising as a result of the Customer's failure to comply with its obligations in Condition 12.1, whether or not such losses or the consequences of such failure were foreseeable at the date of the Contract:
- 13 Exclusion and Limitation of Liability**
- 13.1 This Condition 13 sets out the entire liability of the Company arising under or in connection with the Contract.

- 13.2 Nothing in these Conditions shall exclude or limit the Company's liability for: (a) death or personal injury caused by the Company's negligence; (b) fraud or fraudulent misrepresentation; (c) any liability which cannot legally be limited or excluded.
- 13.3 Subject to Condition 13.2 the Company shall not be liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Contract for any:
- (a) loss of profits;
 - (b) loss of anticipated savings;
 - (c) loss of business,
- in each case whether direct or indirect, or for any indirect, special or consequential loss or damage howsoever arising.
- 13.4 Subject to Condition 13.2, the Company shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused by or otherwise incurred by the Customer (whether directly or indirectly) as a result of any delay in the delivery of the Goods or the performance of the Services, nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds ninety (90) days.
- 13.5 Subject to Conditions 13.2 to 13.4 above the Company's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Contract shall in no event exceed 125% of the price paid or payable (had the Contract not been breached) to the Company for the Goods and/or the Services under the Contract.
- 13.6 Unless expressly stated in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

14 Safety and Recall

- 14.1 If the Company notifies the Customer in writing of any defect in the Goods previously delivered to the Customer or the Services previously performed at any time or any error or omission in the instructions for the use and/or assembly or installation of the Goods (whether or not any such defect, error or omission represents a breach of the warranty in Condition 11 or any other provision of the Contract) which exposes or may expose consumers to any risk of death, injury or damage to property, the Customer shall co-operate fully and promptly with any steps taken by the Company under Condition 14.2 below.
- 14.2 The Company may at its discretion:
- (a) recall any Goods already sold by the Company to the Customer (whether for a refund or credit or for replacement of the Goods which shall in each case be undertaken by the Company) and/or issue any written or other notification to the Customer about the manner

of use or operation of any Goods: and/or
(b) offer to re-perform Services previously provided to the Customer.

15 Subcontracting, Assignment and Third Party Rights

- 15.1 The Customer shall not be entitled to assign, charge, subcontract, transfer or otherwise dispose of all or any of its rights and responsibilities under the Contract or any part of it without the prior written consent of the Company.
- 15.2 The Company may assign, charge, subcontract, transfer or otherwise dispose of its rights and responsibilities under the Contract or any part of it to any person without the prior written consent of the Customer.
- 15.3 A person who is not a party to the Contract (including any employee, officer, agent, representative or sub-contractor of either party) has no rights (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provisions of the Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Company and the Customer which agreement must refer to this Condition 15.3.

16 Export Terms

- 16.1 The Customer hereby acknowledges and agrees that the supply of the Goods and/or Services may be subject to Export Controls and Sanctions Laws. Where the Goods and/or Services are supplied for export from the United Kingdom or the Services are to be performed outside of the United Kingdom, the provisions of this Condition 16 shall apply notwithstanding any other provision of these Conditions.
- 16.2 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions, these Conditions shall prevail.
- 16.3 Subject to Condition 16.4, the Customer shall be responsible for complying with all Applicable Laws governing the performance of Services in the relevant country or the importation, use or sale of the Goods in the country of destination, the payment of any and all duties or taxes on them, the transportation and storage of Goods including any obligation to translate any instructions, labelling or packaging into any other language.
- 16.4 Where a third party is responsible for (i) obtaining any necessary import licences or permits for the Goods and/or Services, or their delivery to the third party, and/or (ii) any applicable customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Goods and/or

Services, the Customer shall use reasonable efforts to ensure that the third party satisfies the requirements specified in this Condition 16.

16.5 The Customer is solely responsible for complying with, and shall not do anything which would cause the Company to be in breach of, Export Controls and Sanctions Laws. In particular, the Customer warrants and represents that it:

- (a) will not use, sell, resell, export, re-export, transfer, distribute, dispose of, disclose or otherwise deal with the Goods and/or Services, directly or indirectly, to: (i) any country, territory, or destination (including but without limitation to Iran, Syria, Cuba, Russia, Crimea & Sevastopol and North Korea) that is subject to Export Controls and Sanctions Laws; or (ii) any person (including individuals and entities) that is subject to Export Controls and Sanctions Laws, without first obtaining any required export licence or other governmental approval and completing such formalities as may be required by Export Controls and Sanctions Laws; and
- (b) shall use reasonable efforts to obtain any required export licence or other governmental approval and complete such formalities as may be required by Export Controls and Sanctions Laws in order to use, sell, resell, export, re-export, transfer, distribute, dispose of, disclose or otherwise deal with the Goods and/or Services.

16.6 The Customer shall not put the Goods and/or Services, in their entirety or in part, to any use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or the development, production, maintenance or storage of missiles capable of delivering such weapons or to any military end-use in violation of any applicable embargo (including, but not limited to, those maintained by the EU, UK, US, OSCE and UN). In addition, the Customer shall not sell, resell, supply, export, re-export, transfer, divert, distribute or dispose of the Goods and/or Services to any third party where the Customer knows or has grounds for suspecting that the Goods and/or Services are or may be intended for one of the uses specified in this Condition.

16.7 In addition to any other remedy available to the Company, the Customer shall indemnify, defend and hold harmless the Company, the members of the Company's Group and their respective directors, officers, employees, sub-contractors and agents in full and on demand (with no liability to mitigate their loss) from and against any and all direct or indirect liabilities, claims, demands, damages, losses or expenses (including legal and other professional adviser's fees and

disbursements), interest and penalties made against or incurred or suffered by any of them howsoever arising whether wholly or in part resulting directly or indirectly from breach of any part of this Condition 16 whether or not such losses or the consequences of the breach were foreseeable at the date of the Contract. The Company reserves the right to terminate the Contract in the event of such breach.

16.8 The Company shall not be obliged to perform any obligation under the Contract and shall have the right to terminate the Contract, without being liable for any damages or costs of any kind, if in its sole discretion it determines that such performance in full or in part would be in violation (including as a result of a delay in or refusal of any required licence) of any Export Controls and Sanctions Laws.

16.9 The Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

17 Force Majeure

17.1 The Company will not be in breach of the Contract nor liable for any failure or delay in the performance of any obligations under the Contract (and the date for performance of the obligations affected will be extended accordingly) as a result of Force Majeure.

17.2 If the event of Force Majeure continues for longer than thirty (30) days, then either party may, whilst the Force Majeure continues, immediately terminate the Contract by notice in writing to the other party.

18 Termination

18.1 Either party may immediately terminate the Contract by giving notice in writing to the other party if:

- (a) the other party commits a material breach of any of its obligations under the Contract which is incapable of remedy; or
- (b) the other party commits a material breach of its obligations under the Contract which is capable of remedy and fails to remedy it or persists in such breach after fourteen (14) days of having been required in writing to remedy or desist; or
- (c) the other party suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is unable to pay its debts as they fall due or admits inability to pay its debts; or
- (d) the other party takes any step or action for or in connection with its entering administration, liquidation (provisional or otherwise) or any composition or arrangement with its creditors (other than in relation to a solvent amalgamation or restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent

- amalgamation or restructuring), having a receiver or administrator appointed to any of its assets or ceasing to carry on business; or
- (e) the other party has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in Condition 18.1(d); or
 - (f) the other party ceases, or threatens to cease, to carry on all or a substantial part of its business; or
 - (g) in the circumstances set out in Conditions 16.7, 16.8, or 20.4.
- 18.2 The Company may immediately terminate all or part of the Contract by giving notice in writing to the Customer if the Customer has undergone a Change of Control.
- 18.3 If the Company becomes entitled to terminate the Contract under Condition 18.1 or Condition 18.2 above, then it may instead at its option immediately suspend or cancel, in whole or in part, further performance of the Contract or cancel any outstanding performance of the Services or delivery of the Goods or stop any Goods in transit without terminating the whole of the Contract.
- 18.4 The termination of the Contract will be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.
- 18.5 Notwithstanding any suspension, cancellation or termination in accordance with Conditions 18.1, 18.2 and 18.3 above the Customer shall pay the Company at the Contract rate for all Goods delivered or Services provided up to and including the date of suspension, cancellation or termination.
- 18.6 In the event of termination of the Contract, any condition that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

19 Notices

- 19.1 All notices between the parties about a Contract must be in writing and delivered by hand or sent by pre-paid first class post or prepaid international air postal service:
- (a) (in case of notices to the Company) to its registered office or such other address as shall be notified to the Customer by the Company in accordance with this Condition 19; or
 - (b) (in the case of the notices to the Customer) to the registered office of the Customer (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer in writing.

- 19.2 Notices shall be deemed to have been received:
- (a) if sent by pre-paid first class post domestic delivery service, two (2) Business Days after posting;
 - (b) if sent by pre-paid international air postal service, five (5) Business Days after posting;
 - (c) if delivered by hand, on the day of delivery provided delivery is between 9.00am and 5.00pm on a Business Day and in all other circumstances the first Business Day after delivery.
- 19.3 To prove service of any notice delivered by:
- (a) hand it shall be sufficient to show that the same was properly addressed and delivered in the manner set out in this Condition 19;
 - (b) sent by pre-paid first class post or prepaid international air postal service it shall be sufficient to show that the same was properly addressed, pre-paid and posted in the manner set out in this Condition 19.

20 Compliance

20.1 Anti-Bribery

Each party shall:

- (a) comply with all Applicable Laws relating to anti-bribery and anti-corruption including but not limited to the US Foreign Corrupt Practices Act 1977 and the UK Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under such Acts set out in Condition 20.1(a) or any other applicable anti-corruption legislation; and
- (c) have, maintain in place and enforce throughout the term of any Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with any anti-bribery legislation.

20.2 Modern Slavery

Each party shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and will not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

20.3 Tax

The parties represent and warrant that they shall comply with all applicable taxation laws, and shall not commit an offence of cheating the public revenue or an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by itself or any other person.

- 20.4 Either party may terminate the Contract immediately upon written notice to the other party where it determines in good faith that the other party has breached this Condition 20, and

each party shall indemnify the other party from all damages, penalties, fines and/or costs of any kind arising from, or relating to, any breach of this Condition 20.

21 General

- 21.1 Any Intellectual Property created by the Company in the course of the performance of the Contract or otherwise in the manufacture of the Goods or the provision of the Services shall remain the Company's property. Aside from the limited licence given in Condition 21.2 below, nothing in the Contract shall be deemed to have given the Customer a licence or any other right to use any of the Intellectual Property of the Company.
- 21.2 Subject to the Customer complying with the terms of the relevant Contract, the Company hereby grants to the Customer a non-exclusive, non-transferable royalty free right to use the Intellectual Property rights contained within the Goods and/or Services (and any related item delivered with the Goods or Services such as instruction manuals, drawings, commissioning and handover documents) solely for the purposes of the receipt, use, maintenance and disposal of the Goods and/or Services.
- 21.3 The Contract is entered into in the English language and all amendments to the Contract, all correspondence concerning or relating to the Contract and all notices given and all documentation to be delivered by either party to the other under these Conditions shall be in writing in the English language or shall be accompanied by an English translation prepared by such person or body as the Company shall have approved in advance.
- 21.4 Nothing in the Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.
- 21.5 The rights and remedies of either party in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such party to the other nor by any failure of, or delay in ascertaining or exercising any such rights or remedies. The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 21.6 If at any time any one or more of the Conditions of the Contract (or any sub-Condition or paragraph or any part of one or more of these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any Applicable Law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or

impaired as a result of that omission.

- 21.7 The Contract sets out the entire agreement and understanding between the Customer and the Company in connection with the sale of the Goods and the provision of Services and shall supersede and replace any prior arrangement, understanding, written or oral agreements between the parties in relation to its subject matter. The Customer acknowledges that the Contract has not been entered into wholly or partly in reliance upon, nor has it been given, any warranty, statement, promise or representation by the Company or on its behalf other than as expressly stated in this Contract and the Company shall have no liability for any pre-contractual statement or representation that is deemed to be a misrepresentation of the terms of the Contract. Nothing in this Condition 21.7 will exclude any liability in respect of misrepresentations made fraudulently.
 - 21.8 No amendment or variation to the Contract shall be effective unless it is in writing, refers specifically to the Contract and is signed by a duly authorised representative of each of the parties.
- ## **22 Law and Jurisdiction**
- 22.1 The Contract, these Conditions and any issues, disputes or claims arising out of or in connection with them (whether contractual or non-contractual in nature, such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by and be construed in accordance with English law.
 - 22.2 All disputes or claims arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such rules. Such arbitration shall take place in the English language in London, UK. The seat of arbitration shall be in England.
 - 22.3 The parties agree that the United Nations Convention on Contracts for the International Sale of Goods 1980 (Vienna Convention) shall not apply to the Contract.