

## TERMS AND CONDITIONS OF SALE

### 1 Definitions

1.1 In these Conditions:

"Applicable Period" has the meaning set out at Condition 3.1;

"Business Day" means Monday to Friday excluding public holidays in England;

"Commissioning" means the undertaking of commissioning tests with respect to the Goods after installation as specified in the Confirmation or otherwise agreed between the parties;

"Conditions" means these terms and conditions and any special conditions included in a Confirmation or which may otherwise be agreed in writing between the parties;

"Confidential Information" means in relation to the Purchaser or the Supplier all information and trade secrets relating to its business or customers which come into the possession of the other party pursuant to the Contract, in any form;

"Confirmation" means an acknowledgement of an Order issued by the Supplier to the Purchaser;

"Contract" means the agreement for the supply of Goods and/or Services established in accordance with these Conditions;

"Consumable" means an item which is intended by the Purchaser to be used up and then replaced, including for example bulbs and fuses;

"Defective Goods" means Goods which do not comply with Condition 9.1; "Defective Services" means Services which do not comply with Condition 9.9;

"Delivery Location" means such location for the delivery of the Goods as is specified in the Confirmation, or such other location as the parties may agree in writing;

"Event of Default" has the meaning set out at Condition 11.1; "Fixed Price Period" has the meaning set out at Condition 4.2;

"Goods" means the goods (including any instalments or parts) identified in a Confirmation;

"Group" means, in relation to a company, that company, any subsidiary or holding company from time to time of that company and any subsidiary from time to time of a holding company of that company;

"Insolvency Event" means each and any of the following in relation to the Purchaser or the Supplier (being the "Relevant Party"): (a) any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Relevant Party (except that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction); (ii) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the Relevant Party or any of its assets; (iii) the enforcement of any security over any assets of the Relevant Party; or (iv) the expropriation, attachment, sequestration, distraining upon or execution over or affecting any material asset of the Relevant Party; (b) the Relevant Party is unable to pay its debts as they fall due or is insolvent; (c) the Relevant Party enters into a composition or arrangement with its creditors or any class of them; (d) the Relevant Party ceases to carry on business or substantially all of its business, or is struck off; or (e) the commencement of any analogous procedure or step in relation to the Relevant Party in any jurisdiction other than England and Wales;

"Intellectual Property Rights" means any and all patents, trade marks, business names, copyright, moral rights, database rights, rights in designs, rights in inventions, and any and all other intellectual property rights, whether or not registered or capable of registration and whether subsisting anywhere in the world and including all applications and rights to apply for any of them together with all or any associated goodwill;

“Loss” means all loss, damage, claims, cost and expense;

“Order” means a binding order, for the purchase of the Goods and/or Services, submitted by the Purchaser and accepted by the Supplier in accordance with Condition 3;

“Price” means the price of the Goods and/or Services stated in the Confirmation or as may otherwise be agreed in writing and any other sums due and payable under the Contract;

“Purchaser” means the legal entity purchasing the Goods and/or Services as identified in the Order; “Quotation” means a quotation provided by the Supplier to the Purchaser in relation to Goods and/or Services; “Recycled Materials” means parts or Goods that are used or reconditioned and are not new;

“Services” means any services (including installation, Commissioning in accordance with Condition 14, repair or maintenance services, as applicable) identified in a Confirmation;

“Software” has the meaning set out at Condition 13.1;

“Specification” means the specification of the Goods and/or Services referred to in a Confirmation or otherwise identified by the Supplier in writing;

“Supplementary Terms” means any additional terms and conditions applicable to the Goods and/or Services, which are referred to or set out in a Confirmation or which are provided to the Purchaser by the Supplier;

“Supplier” Formation Lighting Limited, a company registered in England and Wales under company number 9361288 whose registered office is at 23-25 Waterloo Place, Leamington Spa CV32 5LA may be identified as the supplier of the Goods under the Contract;

“VAT” value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax;

“Warranty” means the warranty detailed in Condition 9.2 or such other warranty as the Supplier may expressly agree in writing; and

“Warranty Period” has the meaning set out at Condition 9.2.

1.2 References to: (i) a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it; (ii) “includes” or “including” shall be construed without limitation to the generality of the preceding words; (iii) “writing” means a method of reproducing words in a legible and non-transitory form, including e-mail; (iv) “indemnify” means to indemnify on demand and hold harmless on an after tax basis; (v) the singular includes the plural and vice versa; (vi) one gender includes all genders; and (vii) any document (including the Contract) shall be construed as a reference to that document as amended from time to time.

1.3 Condition headings do not affect their interpretation.

## **2 Basis of Contract**

2.1 The Supplier will sell and the Purchaser shall buy the Goods and/or Services subject to these Conditions, which supersede any other terms which the Purchaser purports to apply or which are implied by trade, custom or course of dealing.

2.2 The entire agreement between the parties for the supply of the Goods and/or Services consists of: (i) the Confirmation; (ii) any Supplementary Terms; (iii) these Conditions; (iv) the Order; and (v) any documents referred to in these Conditions or the Confirmation. If there is any conflict or inconsistency between these documents, the earlier listed document shall prevail over a latter listed document to the extent of the conflict or inconsistency.

2.3 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. Nothing in this Condition shall operate to exclude or limit the liability of either party for fraudulent misrepresentation.

2.4 All descriptions, performance figures or technical data, dimensions, samples, illustrations and similar information or documentation issued by the Supplier prior to supply are intended merely to present a general idea of the Goods and/or Services described and do not form part of the Contract.

2.5 The formation of the Contract is subject to the Purchaser providing a satisfactory credit rating in accordance with Condition 5.3

### **3 Quotations, Orders and Specifications**

3.1 A Quotation is an invitation to order and is not an offer by the Supplier. Quotations are valid for the period specified within the Quotation, and if no such period is specified a Quotation shall be valid for ninety (90) days from the date of the Quotation (the "Applicable Period").

3.2 The Purchaser's order is an offer to purchase the Goods and/or Services specified in the Quotation, subject to these Conditions. The Purchaser shall ensure that the terms of any order (including any specification supplied by the Purchaser) are complete and accurate in all material respects.

3.3 No order shall be deemed to be accepted by the Supplier unless and until a Confirmation is issued by the Supplier or (if earlier) the Supplier delivers the Goods or performs the Services in accordance with these Conditions. Each Order gives rise to a Contract, and each Contract is separate from each other Contract.

3.4 Unless otherwise agreed, no Order may be cancelled by the Purchaser except with the Supplier's written agreement and on terms that the Purchaser shall indemnify the Supplier against all Losses incurred by the Supplier as a result of the cancellation.

3.5 The Supplier reserves the right to make any changes in the Specification of the Goods and/or Services which do not materially affect their quality or performance.

### **4 Prices**

4.1 Prices specified in a Quotation are valid only for the goods and/or services specified in the Quotation.

4.2 If an Order is received by the Supplier within the Applicable Period, the prices set out in the Quotation shall be fixed for a period of one (1) calendar year, or such other period as may be specified in the Confirmation or as the parties may agree in writing, following receipt of the Order (the "Fixed Price Period"). If the Goods are delivered and/or the Services are performed in accordance with the Conditions within the Fixed Price Period, the prices for the delivery of the Goods and/or performance of the Services set out in the Quotation will apply.

4.3 If delivery of the Goods and/or performance of the Services does not take place within the Fixed Price Period, the Supplier shall be entitled to vary the prices.

4.4 Unless otherwise specified, the Price identified in the Confirmation includes insurance and transportation to the Purchaser's premises within the mainland of Great Britain. The Supplier reserves the right to choose the method of transport and to charge for changes to the Delivery Location or deliveries outside the mainland of Great Britain.

4.5 The Supplier may charge an increased Price when the cost to the Supplier of supplying the Goods and/or performing the Services increases for any reason which is beyond the reasonable control of the Supplier including, for example, increased costs of manufacturing, or where the supply of the Goods and/or performance of the Services is varied or delayed due to the Purchaser's acts or omissions, failure to supply information or failure to supply information which is accurate in all material respects, delay in approving drawings and specifications or alteration of requirements or otherwise.

### **5 Payment**

5.1 Invoices may be issued by the Supplier at any time on or after delivery of the Goods or performance of the Services.

5.2 Time for payment shall be of the essence and, unless credit arrangements or other payment terms are agreed and endorsed on the Quotation or Confirmation, payment shall be made in full and cleared funds to the Supplier or its nominee within thirty (30) days of the invoice date.

5.3 Notwithstanding the provisions of Condition 5.2, the Supplier shall carry out such credit reference checks in relation to the Purchaser as it deems reasonable. The Supplier reserves the right to cancel or suspend the Contract at any time prior to delivery of the Goods and/or performance of the Services if in its reasonable discretion it is not satisfied with the credit rating of the Purchaser.

5.4 The currency of payment will be UK pounds sterling unless otherwise agreed and VAT will be charged in addition at the applicable rate.

5.5 The Purchaser shall pay the Supplier interest on overdue amounts in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 accruing on a daily basis until payment is made, after as well as before judgement.

5.6 Payment may not be refused or delayed by reason of any defect in the Goods or Services. The Purchaser shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

5.7 Failure by the Purchaser to make payments by the due date for payment in accordance with this Condition 5 shall entitle the Supplier to postpone further supplies of Goods or to suspend performance of Services under the Contract or any other contract with the Purchaser, or to cancel any such contract with the Purchaser without penalty and without prejudice to any of the Supplier's rights.

5.8 The Supplier shall be entitled to bring an action for the Price of the Goods or part thereof whether or not property in the Goods has passed in accordance with Condition 7.

5.9 If the supply of the Goods and/or Services is suspended or terminated for any reason, the Supplier may raise an invoice within sixty (60) days of the suspension or termination in respect of the Goods delivered and/or Services performed by the Supplier but not yet invoiced by the Supplier.

## **6 Delivery of the Goods**

6.1 Delivery shall comprise the offloading of the Goods or attempt to deliver at the Delivery Location or, if the Purchaser is to collect the Goods, the collection of the Goods by the Purchaser or its carrier as specified in the Confirmation or otherwise agreed between the parties. Where necessary, the Purchaser shall provide, at its expense, adequate and appropriate equipment and manual labour for offloading any Goods.

6.2 The Supplier shall endeavour to deliver the Goods on the date specified in the Confirmation. Unless otherwise stated, dates for delivery are approximate only and the time of delivery is not of the essence.

6.3 If the Purchaser fails to take delivery of the Goods or the Supplier is unable to deliver the Goods because the Purchaser has not provided adequate instructions, documents, licenses, authorisations, equipment, manual labour or assistance, then the Goods shall be deemed delivered and the Supplier may (at its option): (i) raise an invoice for the Goods concerned as if delivery had occurred; (ii) store the Goods at the Purchaser's risk until actual delivery and charge the Purchaser for the reasonable costs (including insurance) in connection with such storage; (iii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the Price or charge the Purchaser for any shortfall below the Price; or (iv) terminate the Contract without any liability to the Purchaser.

6.4 Unless otherwise agreed between the parties in writing, the Supplier may deliver the Goods in instalments. Any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.

## **7 Risk and Property**

7.1 Subject to Condition 7.2, risk of loss or damage to the Goods shall pass to the Purchaser on delivery in accordance with Condition 6.

7.2 Where the Price does not include insurance and transportation of the Goods and the Purchaser makes its own arrangements in this regard, risk shall pass to the Purchaser when the Goods are loaded onto the Purchaser's transport or otherwise collected by or on behalf of the Purchaser or (if the Supplier agrees to deliver them using its own transport) they are off-loaded at their destination as specified in the

Confirmation or otherwise agreed between the parties. The Supplier takes reasonable care and precautions in packaging the Goods and therefore cannot accept responsibility for damage during transit unless it has failed to take such reasonable care.

7.3 The Purchaser shall arrange insurance cover for the full replacement value against all risks between risk and property passing.

7.4 The Goods remain the property of the Supplier until the Supplier has received payment of the Price and all other sums which are or which become due from the Purchaser on any account with the Supplier.

7.5 Until ownership of the Goods passes to the Purchaser in accordance with Condition 7.4 or until they are used or sold in the ordinary course of the Purchaser's business, the Purchaser shall: (i) hold the Goods as the Supplier's fiduciary bailee; (ii) store the Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as the Supplier's property; (iii) not destroy, deface or obscure any identifying mark or packaging of the Goods; (iv) maintain the Goods in a satisfactory condition insured for their full price against all risks for their full price from the date of delivery (maintaining the proceeds of insurance on trust for the Supplier); (v) notify the Supplier immediately if it becomes subject to an Insolvency Event; and (vi) give the Supplier such information relating to the Goods as the Supplier may require.

7.6 The Supplier may recover or resell the Goods so as to discharge any overdue payment from the Purchaser under the Contract.

7.7 In order to verify the Purchaser's compliance with its obligations and to exercise its rights under these Conditions, employees or agents of the Supplier shall be entitled without notice to enter the Purchaser's premises or such other premises where the Goods are stored. Where the Goods are stored at a premises which is owned by a third party, the Purchaser shall use all reasonable endeavours to procure entry to such premises by the Supplier in order to exercise the right set out in this Condition 7.

7.8 The Purchaser's right to sell the Goods before title passes shall terminate automatically if the Purchaser suffers an Insolvency Event or on written notice by the Supplier.

7.9 Nothing in this Condition shall give the Purchaser the right to return Goods to the Supplier other than in accordance with Condition 10.

## **8 Products / Services**

8.1 The Supplier shall endeavour to meet any performance dates for the Services specified in the Confirmation or Specification, but any such dates shall be approximate only and time of performance of the Services is not of the essence.

8.2 It is a condition of the Contract that the Purchaser receives or arranges for the receipt or performance of the Services when performance is effected by the Supplier, and the Purchaser shall provide all necessary labour, materials and plant, prepare the site, procure all licenses and other authorisations required for the Supplier or its subcontractor (as appropriate) to perform the Services and take such other steps as the Supplier may reasonably require.

8.3 The Supplier shall have the right to make any changes to the Products and Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and in circumstances where components are not available the Supplier shall seek replacement components where required to maintain product supply to the client.

## **9 Warranties**

9.1 The Supplier warrants to the Purchaser that the Goods will correspond with the Specification at the time of delivery.

9.2 Unless otherwise agreed in writing between the parties, and subject to the remaining provisions of this Condition 9, the Supplier warrants that any Goods which are labelled with the trade mark "Formation" or "Schmitz" shall be free of manufacturing and material defects for a period of Three (3) years from the date of delivery of the Goods (the "Warranty Period") unless an extended 5 year period has been offered in writing.

9.3 The Supplier may agree warranty terms which the Purchaser may pass on to its customers or the ultimate end users of the Goods, as applicable. Details of such warranty terms shall be referred to or set out

in a Confirmation, or otherwise identified by the Supplier in writing.

9.4 Except as provided under Condition 9.3, the warranty detailed in Condition 9.2 (the "Warranty") is given solely by the Supplier to the Purchaser, and is not transferrable unless otherwise expressly agreed by the Supplier.

9.5 The Warranty is conditional upon the satisfaction of the following terms:

- (a) the Goods are used by the Purchaser in conformity with the Specification and any instructions or other specification(s) provided by the Supplier;
- (b) where relevant, the Goods were professionally installed and placed in service according to the installation instructions accompanying the Goods;
- (c) the maintenance and repair services on the Goods have been performed in accordance with the Supplier's specifications;
- (d) services including software upgrades, updates, added functionality or recommissioning, have been performed exclusively by the Supplier or a third party nominated by the Supplier;
- (e) the acceptable limits for temperatures and voltages according to the relevant technical or standards notified to the Purchaser in respect of the Goods are not exceeded; and
- (f) the Goods are not exposed to any unintended mechanical and/or chemical stresses.
- (g) all emergency conversions must be fully charged for 48-72 hours before any testing or discharge is carried out.

Failure to do this shall void all Battery Warranty.

The Supplier shall not be liable under the Warranty if the terms set out in this Condition 9.5 are not satisfied.

9.6 The Warranty will not apply to:

- (a) any incidental costs arising in connection with the correction of defects (guarantee fulfilment), such as for installation and removal, transport of the defective and repaired or new goods, disposal, travel and transit time, and any delivery costs; these costs are borne by the Purchaser;
- (b) wear parts, such as all standard lamps, batteries and hard drives; computers and servers that contain hard disks or mechanical wear parts;
- (c) plastic parts (e.g. made of polycarbonate) to the extent they discolour or embrittle due to the natural ageing process;
- (d) electronic components, products and lamps that the Supplier sells as articles of merchandise, such as touch panels, printers and computers under third-party labels, as well as lamps of other manufacturers;
- (e) settings or parameter settings on equipment that change based on wear and tear, fatigue or soiling;
- (f) product defects that are attributable to software errors, bugs, viruses or the like;
- (g) services including software upgrades, updates, added functionality or recommissioning, have been performed exclusively by the Supplier or a third party nominated by the Supplier;
- (h) any Consumables;
- (i) any Goods which are not sold to the Purchaser in new condition; or
- (j) any Goods which are not placed in service in the United Kingdom or Republic of Ireland by the Purchaser.

9.7 The Warranty shall expire immediately if the Purchaser or third parties make or perform changes, repairs, service work or troubleshooting in respect of the Goods or any replacement goods other than in conformance with the requirements of this Condition 9 without the prior written consent of the Supplier.

9.8 The Supplier shall not be liable under the warranty at Condition 9.1 if: (a) the Price has not been paid by the due date for payment; (b) any defect in the Goods arises as a result of any information, drawing, instruction or specification supplied by the Purchaser; or (c) any defect in the Goods arises due to fair wear and tear, wilful damage, negligence of the Purchaser or any persons into whose control the Goods may pass, abnormal storage or working conditions, failure to follow the Supplier's instructions (whether oral or written), misuse or alteration or reworking of the Goods without the Supplier's prior approval.

9.9 Subject to Condition 9.10, and unless otherwise agreed, the Supplier warrants to the Purchaser that the Services will be provided in accordance with the Specification.

9.10 The Supplier shall not be liable under the warranty detailed at Condition 9.9 (or any other warranty, condition or guarantee) if: (i) the Price has not been paid by the due date for payment; (ii) the Services are provided based on inaccurate or misleading information provided by the Purchaser; (iii) the Services are provided in accordance with the instructions of the Purchaser; or (iv) the Purchaser is in breach of the Contract.

## 10 Acceptance, Defects and Remedies

10.1 The Purchaser shall accept all the Goods and Services which meet the requirements of Conditions 9.1 and 9.8 respectively in all material respects.

10.2 Without affecting acceptance of the Goods and/or Services in accordance with applicable law, the Purchaser shall be deemed to have accepted the Goods and/or Services where: (i) the Purchaser asks for, or agrees to, the repair or replacement of the Goods or re-performance of the Services pursuant to Conditions 10.6 and 10.9 respectively; (ii) the Goods are delivered to a third party under a sub-sale or other disposition; (iii) the Purchaser has not notified the Supplier of a defect or error in relation to the Goods and/or Services within the timescales set out at Conditions 10.3 to 10.5, as appropriate.

10.3 Subject to Condition 10.4, the Purchaser must provide written notice to the Supplier of:

- (a) any errors in the quantity of Goods delivered within forty eight (48) hours of delivery; and
- (b) any Defective Goods within fourteen (14) days of delivery.

10.4 Where any defect in respect of Defective Goods is not reasonably apparent on delivery, the Purchaser must provide written notice to the Supplier: (i) within fourteen (14) days of the date on which the Purchaser became aware of, or ought reasonably to have become aware of the defect; or (ii) thirty (30) days from the date of delivery, whichever is later.

10.5 The Purchaser must notify the Supplier of Defective Services by providing written notice to the Supplier within four (4) days of completion of the relevant part of the Services

10.6 If the Supplier confirms to the Purchaser that it has a valid claim in relation to Defective Goods which has been notified to the Supplier in accordance with Conditions 10.3 and 10.4, as appropriate, the Defective Goods shall be appropriately stored by the Purchaser until the Supplier shall have had an opportunity to inspect them and thereafter the Supplier shall at its discretion, repair or replace the Defective Goods free of charge. The Purchaser shall, in accordance with the Supplier's instructions, return any Defective Goods to the Supplier at the Supplier's cost or make such Defective Goods available for collection by the Supplier.

10.7 The Contract applies to goods which are repaired or replaced under Condition 10.6 as it applies to the Goods, and the Supplier shall acquire all right, title and interest in and to the original Goods to the extent replaced.

10.8 Any replacement goods or parts provided by the Supplier in accordance with Condition 10.6: (i) may contain new or Recycled Materials; (ii) shall have the same functionality as the Goods being replaced; and (iii) shall not exhibit any material or manufacturing defects for the remainder of the Warranty Period in respect of the Goods replaced. The dimensions and design of any replacement goods may deviate from the original Goods, provided that such deviations do not materially affect the quality or performance of such goods.

10.9 If the Supplier confirms to the Purchaser that it has a valid claim in relation to Defective Services which has been notified to the Supplier under Condition 10.5, the Supplier shall re-perform Defective Services at its own cost within a reasonable period of time.

10.10 The Contract applies to any services which are re-performed under Condition 10.9 as it applies to the Services.

10.11 Subject to Condition 11, where the Supplier fails to deliver the Goods or perform the Services as a result of an Event of Default, the Supplier's liability is limited to the price reasonably and properly incurred by the Purchaser in obtaining replacement goods and/or services of an equivalent or similar description and quality to the Goods and/or Services at the lowest price reasonably available, less an amount equal to the Price.

10.12 The remedies set forth in this Condition 10 shall be the Purchaser's sole and exclusive remedy for any Defective Goods and/or Defective Services supplied by the Supplier or failure by the Supplier to deliver the Goods or perform the Services, and the Supplier shall have no further liability to the Purchaser in respect thereof.

## 11 Limitation of Liability



11.1 Subject to Condition 10, the following sets out the entire financial liability of the Supplier in respect of the following (each being an “Event of Default”): (i) a breach by the Supplier of the Contract and (ii) a tortious act or omission (including negligence), breach of statutory duty, misrepresentation or misstatement, of the Supplier in connection with the Contract, and nothing in the Contract shall affect the Supplier’s liability for death or personal injury, fraud, fraudulent representation or any other liability to the extent it cannot be excluded or limited by law.

11.2 Without prejudice to any specific limitations and exclusions under these Conditions, the Supplier’s total financial liability for all Events of Default in aggregate in respect of any Contract shall not exceed the sum of ten million pounds sterling (£5,000,000).

11.3 All warranties, conditions or terms not set out in the Contract and which would otherwise be implied or incorporated into the Contract by statute, common law or otherwise (other than as to statutory interest, or title to the Goods) are hereby excluded except to the extent they may not be excluded or limited by law.

11.4 Subject to Condition 11.1, the Purchaser acknowledges that any recommendations given by the Supplier as to the use, application, storage, handling or disposal of the Goods (whether before or after delivery) in sales or technical literature or in response to an enquiry or in any other form are provided in good faith and the Purchaser shall be responsible for assessing the suitability and appropriateness of such recommendations for itself and the Supplier shall not have any liability for such recommendations.

11.5 In no event shall the Supplier be liable, whether for breach of contract, any tortious act or omission (including negligence) or otherwise, under or in connection with the Contract for any Loss for which the Purchaser has assumed the risk under the Contract, loss of profit, loss of reputation, loss of business, revenue or goodwill, anticipated savings, loss or damage to data, or for any consequential or indirect loss, and regardless of whether the loss or damage would arise in the ordinary course of events, is reasonably foreseeable, is in the contemplation of the parties, or otherwise.

11.6 The Supplier shall have no liability to the Purchaser for Losses which could have been avoided by the Purchaser undertaking adequate testing of the Goods upon delivery or prior to installation.

11.7 The Purchaser undertakes that it shall not bring any claim against any individual employee or officer of the Supplier in respect of or relating to the Contract.

## **12 Intellectual Property Rights**

12.1 All Intellectual Property Rights in or arising out of or in connection with the Goods or Services shall belong to the Supplier (or its licensor) notwithstanding that any specification may have been prepared in whole or in part by or on behalf of the Purchaser and, to the extent not otherwise owned by the Supplier (or its licensor), the Purchaser hereby assigns all right, title and interest (including all Intellectual Property Rights) in the Goods, Services and in any specification developed by the Supplier.

12.2 The Purchaser warrants that any specification or other information provided by or on its behalf for use by the Supplier will not infringe the Intellectual Property Rights or other rights of any third party, and the Purchaser shall indemnify the Supplier from and against all and any Losses suffered or incurred by the Supplier (or its affiliates) arising out of or in connection with any such infringement or alleged infringement.

12.3 The Purchaser shall, promptly at the Supplier’s request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Supplier may from time to time require for the purpose of securing for the Supplier the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Supplier in accordance with Condition 12.1.

## **13 Software Licence**

13.1 Upon delivery of the Goods to the Purchaser in accordance with this Contract, the Supplier grants to the Purchaser a non-exclusive and royalty-free licence to use any software incorporated in the Goods (“the Software”) solely in connection with the use of the Goods.

13.2 The Software contains Confidential Information of the Supplier (and/or its licensor) and the Software



and all such Confidential Information are the exclusive property of the Supplier or its licensor, as appropriate.

13.3 Save to the extent permitted by Section 50B of the Copyright, Designs and Patents Act 1988 (as may be amended, updated or replaced from time to time), the Purchaser shall not: (i) copy the whole or any part of the Software; or (ii) decompile, disassemble or reverse compile the whole or any part of the Software from object code into source code.

13.4 Unless otherwise agreed between the parties, the Purchaser shall not: (i) modify, merge or combine the whole or any part of the Software with any other software or documentation; or (ii) assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Software nor use on behalf of or make available the same to any third party. The Software as modified or merged pursuant to this Condition shall remain subject to these Terms.

13.5 If the Purchaser fails to make payment of the Price in accordance with these Conditions or as otherwise agreed in writing between the parties, or the Supplier at any point fails to provide a satisfactory credit rating in accordance with Condition 5.3, the parties hereby agree that the licence detailed at Condition 13.1 shall automatically terminate.

## 14 Commissioning

14.1 The terms of this Condition 14 will only apply in respect of Goods which the parties have agreed shall be subject to Commissioning, whether specified in the Confirmation or otherwise.

14.2 The Purchaser shall fully and properly install the Goods prior to the due date for Commissioning agreed by the Supplier. The Supplier shall give the Purchaser not less than two (2) days' notice of the date after which the Supplier shall be ready to perform the commissioning tests. Subject always to Condition 8.1, unless otherwise agreed, the commissioning tests shall take place within seven (7) days after the said date on such day or days as the Supplier shall notify the Purchaser.

14.3 The Supplier shall be under no liability whatsoever for any loss or damage whatsoever direct or consequential and howsoever caused to the Purchaser or to any third party during or as a result of or in connection with the installation of the Goods where such installation is the sole responsibility of the Purchaser. The Supplier shall have no liability for any delay in the Commissioning due to the failure of the Purchaser to fully and properly install the Goods prior to the due date for the Commissioning.

14.4 To the extent that the Purchaser has not fully and properly installed the Goods prior to the due date for the Commissioning, the Supplier shall be entitled to charge the Purchaser an abortive fee for cancellation of the original Commissioning date and a fee for any work or time incurred by the Supplier and at its option either: (i) require the Purchaser to rectify any faults in the installation and/or complete the installation as appropriate before the Supplier can carry out the commissioning tests; or (ii) rectify any such faults or complete the installation as appropriate itself and charge the Purchaser accordingly.

14.5 The Purchaser shall procure the Supplier such access to its or the ultimate client's premises, systems, data, and such office accommodation and other facilities (on site and/or remotely), as may reasonably be required by the Supplier to carry out the Commissioning.

14.6 The Purchaser shall ensure that it (or, where appropriate, shall procure that the ultimate client) has appropriate back-up, security and virus-checking procedures in place for any computer facilities the Supplier requires access to (on site or remotely) in order to carry out the Commissioning. The Supplier shall have no liability for any viruses, trojan horses or similar destructive, disruptive or nuisance programmes contained or introduced into the Purchaser's or the ultimate client's equipment or systems due to the Software or whilst carrying out the Commissioning or otherwise.

14.7 The Supplier's engineers will comply with the Supplier's health and safety policy from time to time whilst on the Purchaser's or the ultimate client's site to carry out the Commissioning (a copy of which is available from the Supplier upon request) and will use reasonable endeavours to comply with such other reasonable health and safety policies relating to the site as are notified to the Supplier and the relevant engineers at least seven (7) days in advance of the due date for Commissioning.

14.8 The Purchaser shall indemnify the Supplier against all and any Loss suffered by the Supplier (including any liability incurred to any other person) as a direct result of the Supplier carrying out the Commissioning in accordance with this Contract.

14.9 If the Goods fail the commissioning tests, the Supplier may require such commissioning test to be repeated on the same terms, as set out in this Condition 14. Where the failure is due to: (i) a defect in the Goods, the cost for repeating the tests shall be borne by the Supplier; (ii) a defect in the installation conducted by the Purchaser, the cost for repeating the tests shall be borne by the Purchaser; or (iii) the Goods being incompatible with the system in which they are intended to be used, the cost for repeating the tests shall be borne equally between the parties.

14.10 If the Goods fail to pass the commissioning tests on the repetition thereof under Condition 14.9, the Purchaser, after due consultation with the Supplier, shall be entitled to: (i) order one further repetition of the commissioning tests under the terms of Condition 14.9; (ii) reject the Goods in which event the Purchaser shall have the same remedies against the Supplier as are provided under Condition 10; or (iii) accept the Goods, if the Purchaser so wishes, notwithstanding that the Goods are not complete in accordance with the Contract.

14.11 As soon as practicable following the Goods passing the commissioning tests under this Condition 14, the Supplier shall issue a certificate to that effect.

## **15 Termination**

15.1 The Supplier may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the Purchaser, if: (i) the Purchaser commits any breach of the Contract and (if capable of remedy) fails to remedy the breach within seven (7) days after being required by written notice to do so; or (ii) an Insolvency Event occurs in relation to the Purchaser.

15.2 The Purchaser may not, without the prior written agreement of the Supplier terminate the Contract (in whole or in part) or make any variations to the Contract (including without limitation as to the quantity or type of Goods or Services) once the Supplier has issued its Confirmation. If any termination or variation is agreed by the Supplier, the Supplier may vary its prices, timescales and any other terms accordingly and may charge a handling or other fee as it deems appropriate in its sole discretion.

15.3 Upon termination of the Contract for whatever reason, all charges for Goods or Services shall become immediately due and payable by the Purchaser to the Supplier.

15.4 Termination of the Contract does not affect: (i) the rights or liabilities of the parties which have accrued on or before termination; and (ii) the continuance in force of Conditions 7, 9, 11, 12, 13, 15, 16 and 19 which survive termination of the Contract.

## **16 Indemnity**

Except to the extent the Supplier may be liable to the Purchaser under the Contract, the Purchaser agrees to indemnify the Supplier against all and any Losses incurred by the Supplier: (a) arising in connection with the Supplier's use of any information, instructions, specifications, materials or products supplied by the Purchaser to the Supplier in respect of the Goods and/or Services; and (b) toward a third party arising out of or in connection with the Goods supplied by the Supplier or their operation or use, or the performance or use of the Services, and whether arising by reason of the negligence of the Supplier or otherwise (including any claims by customers of the Purchaser and any liability arising due to the use of the Goods for counterfeiting purposes).

## **17 Notices**

Any notice required to be given by either party hereunder shall be made in writing (which shall include, for the avoidance of doubt, by e-mail). Where written notice is to be sent by post, it shall be dispatched to the other party by first class registered or recorded delivery post at the respective addresses of the party as set out in the Order or the Acknowledgement or by fax numbers for the parties as stated in these documents and promptly confirmed by written notice. Any notice sent by post shall be deemed (in the absence of evidence of earlier receipt) to have been received on the fifth (5th) Business Day after the day of posting. Any notice sent by fax shall be deemed to have been delivered upon receipt of the hard copy.

## **18 Force Majeure**

The Supplier shall have no liability if it is delayed, prevented or hindered in performing its obligations under the Contract due to circumstances beyond its reasonable control including, without limitation, acts of God,

breakages of machinery, shortages of materials or utilities, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## **19 Confidentiality**

19.1 Each party undertakes to the other that it shall keep confidential and shall not at any time disclose to any person any Confidential Information concerning the other party, except as permitted by Condition 19.2.

19.2 Each party may disclose the other party's Confidential Information: (i) to its employees, officers, representatives or advisers who need to know such information. Each party shall procure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this Condition 19.2; and (ii) as  
may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

19.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.

19.4 Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of this Condition 19 and accordingly a party will be entitled, without proof of special damage, to an injunction and other equitable relief for any actual or threatened breach of this Condition 19.

## **20 General**

20.1 Any member of the Supplier's group of companies may perform any of the Supplier's obligations or exercise any of its rights by itself or through any other member of its group.

20.2 Any turnkey, installation, maintenance and support provided by the Supplier to the Purchaser or the Purchaser's ultimate client (excluding, for the avoidance of doubt, any of the Services) shall be subject to Supplementary Terms.

20.3 The Contract is personal to the Purchaser and the Purchaser shall not assign or transfer to any other person any of its rights or obligations under the Contract without the prior written consent of the Supplier. The Supplier may assign, transfer or sub-contract all or any of its rights and obligations under the Contract to any other person without the consent of the Purchaser.

20.4 No failure or delay by the Supplier in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by the Supplier of any breach of the Contract by the Purchaser shall be effective unless in writing signed by a duly authorised officer of the Supplier and shall not in any event be considered as a waiver of any subsequent breach of the same or any other provision.

20.5 If any provision of these terms is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these terms and the remainder of the provision in question shall not be affected.

20.6 Except as provided by these Conditions, a person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 (as may be amended, updated or replaced from time to time) to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

20.7 The rights of the Purchaser under the Contract are the Purchaser's only rights relating to the subject matter of the Contract, and are to the exclusion of any other legal rights other than the right to claim damages for breach of contract which is not otherwise excluded by the Contract.

20.8 Any member of the Supplier's group of companies may perform any of the Supplier's obligations or exercise any of its rights by itself or through any other member of its Group.

20.9 The Contract shall be subject to the laws of England and the exclusive jurisdiction of its Courts. Nothing in this Condition shall limit the right of the Supplier to, at its discretion, take proceedings against the Purchaser in any other Court of competent jurisdiction, nor shall the taking of proceedings in any one or

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more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.