

AIPHONE UK LIMITED TERMS AND CONDITIONS OF SUPPLY

*These Terms and Conditions (“**Terms**”) and Order together set out the basis on which we, the Supplier (defined below), will provide you, the Customer (defined below) with Goods (defined below). These Terms and your signed Order, once accepted by us, together constitute the legally binding agreement between us for the supply and purchase of Goods (“**Contract**”). We may accept the Order by countersigning the Order, or by confirming in writing (including email) that we accept the Order, at which point the Contract will come into force. These Terms and the Order apply to the exclusion of all other terms and conditions.*

The Customer’s attention is drawn in particular to clauses 4.13(b), 5 and 13.

1. Interpretation

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

1.1 Definitions:

Business Day: means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer: means the person, company or other entity who purchases Goods from the Supplier.

Data Protection Legislation: means any applicable data protection related laws and regulations, as amended, extended or re-enacted from time to time, including the following:

- (a) Data Protection Act 2018 and any legislation relating to the processing of personal data effective in the United Kingdom that is intended to replicate or maintain some or all of the provisions, rights and obligations set out in the GDPR in circumstances where the GDPR is no longer applicable in the United Kingdom because the United Kingdom is no longer a member of the European Union;
- (b) EC Regulation 2016/679 (the “**GDPR**”) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data; and
- (c) all local laws or regulations implementing or supplementing the GDPR.

Delivery Location: means the location set out in the Order, or such other location as the parties may expressly agree in writing after the Supplier notifies the Customer that the Goods are ready.

Force Majeure Event: has the meaning given to it in clause 16.1.

Goods: means the goods (or any part of them) of the Supplier for which the Customer makes an Order, including any Bespoke Goods (as defined in clause 3.2).

Goods Specification: means any specification for the Goods, including any relevant plans or drawings, that references the Order and is expressly agreed in writing by the Customer and the Supplier.

Insolvency Event: means any of the events in 14.1(b) to 14.1(d) (inclusive).

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

Order: means the Customer's order for Goods, as set out in the 'Order Form' that references these Terms, and which is signed by the Customer.

Supplier: means AIPHONE UK LIMITED registered in England and Wales with company number 09591093 whose registered office is at Unit 25 Mitre Bridge Industrial Park, Mitre Way, London, England, W10 6AU.

Supplier Materials: has the meaning given in clause 8.1(f).

Terms: means these terms and conditions as amended from time to time in accordance with clause 19.6.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes emails.

2. Basis of contract

- 2.1 The Supplier will supply, and the Customer will purchase, such quantities of Goods as are set out in the Order in accordance with this clause 2 and the remainder of these Terms.
- 2.2 These Terms apply to the Contract to the exclusion of all other terms and conditions that the Customer seeks to impose or incorporate, or which are otherwise implied by trade, custom, practice or course of dealing.
- 2.3 Each quotation that the Supplier provides shall be set out in an 'Order Form' that references these Terms, and is valid for 30 Business Days (unless otherwise stated on the 'Order Form'). When the Supplier receives the Order (signed by the Customer), this constitutes an offer by the Customer to purchase the Goods on the basis of these Terms. The Supplier shall be free to accept or decline each Order in its discretion. An Order shall only be deemed accepted when countersigned by the Supplier or when written acceptance of it has been issued by the Supplier, at which point the Contract will come into force.
- 2.4 Each Order accepted by the Supplier constitutes a separate Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions or illustrations of the Goods contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They do not form part of the Contract.
- 2.6 Any representation made orally about stock availability shall not constitute acceptance by the Supplier of an Order.
- 2.7 The Customer may only cancel an Order as set out in the 'Supplier's Return Policy' as contained in clause 6.

3. Goods

- 3.1 The Goods are described in the relevant Order and/or the Goods Specification.
- 3.2 To the extent that the Goods are to be designed and/or manufactured in accordance with a Goods Specification supplied by the Customer or where any non-standard modifications are requested by the Customer, including engraving, specific sizing, variations to the colour or material of the Goods, or other variations, these Goods are classified as "**Bespoke Goods**".
- 3.3 The Customer shall indemnify the Supplier on demand against all liabilities, costs, expenses, damages and losses (including professional costs) that may be suffered or incurred by the Supplier in connection with any claim or threatened claim against the Supplier alleging infringement of a third party's intellectual property rights arising out of or

in connection with the design or manufacture of Bespoke Goods (to the extent not caused through any fault of the Supplier).

- 3.4 The Supplier may amend a Goods Specification to the extent required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in such event. If the Supplier is unable to do so without incurring additional cost, it may cancel the Order without penalty (and shall refund to the Customer any deposit or other sums paid to the Supplier in respect of that Order) or otherwise agree with the Customer in writing any adjustment to the price of the relevant Goods.

4. Delivery of Goods

4.1 The Supplier shall ensure that:

- (a) each delivery of Goods is accompanied by a delivery note which shows the date on which the Goods have been dispatched by the Supplier, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any); and
- (b) the delivery note clearly states any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The Goods shall be:

- (a) delivered by the Supplier to the Delivery Location; but
- (b) if no Delivery Location is stated in the Order, or the parties agree that the Customer shall collect the Goods, collection shall be made by the Customer from the Supplier's premises at Unit 25, Mitre Bridge Industrial Estate, Mitre Way, London, W10 6AU or such other location as may be agreed in writing with the Supplier.

4.3 Delivery of each Good made in accordance with clause 4.2(a) shall be completed on the arrival of the Good at the Delivery Location.

4.4 Delivery of each Good made in accordance with clause 4.2(b) shall be deemed to have completed when the Good has been placed by the Supplier at the Delivery Location, at the Customer's disposal.

4.5 The Supplier shall use its reasonable endeavours to deliver the Goods at the estimated delivery date and time (as may be identified in the Order). However, time of delivery shall not be of the essence. The Supplier shall not, in particular, be liable for any delay in delivery of the Goods to the extent caused by a Force Majeure Event or an act or omission

off the Customer, including the Customer's failure to provide the Supplier with adequate delivery instructions and/or other information that is relevant to the supply of the Goods, or to pay import tax and duty (as required by clause 4.13(b)).

- 4.6 If the Supplier is unable to complete delivery of the Goods due to a Customer-requested change of delivery location, inaccurate information provided by the Customer and/or another act or omission of the Customer, the Supplier shall be entitled to store the Goods until delivery takes place, and Customer agrees to pay for all related costs reasonably incurred (including storage, insurance and costs incurred in re-delivery and/or attempted re-delivery).
- 4.7 If the Supplier fails to deliver Goods, its liability shall be limited to any costs and expenses reasonably incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 4.8 If the Customer fails to take or accept delivery of the Goods within three Business Days of delivery to the Delivery Location or the Supplier notifying the Customer that the Goods are ready, as applicable, ("**Delivery**") then except where the failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall be entitled to store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.9 If, ten Business Days after Delivery, the Customer has not taken or accepted delivery of all the Goods, the Supplier may resell or otherwise dispose of part or all of the Goods less any sums received by the Supplier where it has managed to sell the Goods. The Supplier reserves the right to charge the Customer reasonable storage and selling costs. The Customer shall pay for the Goods in accordance with the original invoice plus any costs and expenses incurred by the Supplier (as referred to in clause 4.8(b) and/or this clause 4.9),
- 4.10 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered ("**Tolerance**"), the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods. If the quantity of Goods delivered exceeds the Tolerance, the Customer may reject the Goods that exceed the Tolerance.

- 4.11 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately, all still under the same Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.12 Where, in accordance with clause 4.2(a), the Delivery Location is outside the United Kingdom, delivery of the order may be subject to import duties and taxes which are applied once the Goods reach the Delivery Location.
- 4.13 The Customer and Supplier acknowledge and agree that:
- (a) Delivery of Goods will be made DAP (Incoterms 2020) unless otherwise expressly agreed in writing; and
 - (b) The Customer is responsible for payment of any and all import duties and taxes and shall ensure these are paid at the appropriate time to allow on-time delivery of Goods at the Delivery Location (including provision of any paperwork and registration to all relevant third parties).

5. Quality of Goods

- 5.1 The Supplier warrants that on delivery, and for a period of 3 years from the date of the delivery of Goods ("**Warranty Period**"), the Goods shall:
- (a) conform in all material respects with the Goods Specification; and
 - (b) be free from material defects in design, material and workmanship, (the "**Warranty**").
- 5.2 The Goods are not eligible for the Warranty, and the Supplier shall not be liable for any defect in the Goods, to the extent that:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 6.6;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;

- (g) the defect is caused by installation of the Goods and/or provision of batteries or spare parts, for which the Supplier is not responsible; and/or
- (h) the defect arises as a result of use of the Goods with other products, software or systems not approved by the Supplier.

6. Supplier's Return Policy

Cancellation for convenience

- 6.1 The Customer may request by notifying the Supplier at order@aiphone.co.uk that it wishes to cancel or exchange part or all of an Order, except Bespoke Goods. The Supplier may consider such a request if all of the requirements of clause 6.2 are met. However, the Supplier is not obliged to agree to any such request.
- 6.2 Any refund, exchange or credit will only be provided by the Supplier if:
- (a) the Goods are not Bespoke Goods;
 - (b) the request is made by the Customer within 60 days of placing the Order to buy the Goods, unless otherwise agreed by the parties in writing;
 - (c) the Goods are received back by the Supplier in perfect condition; and
 - (d) the packaging is received back by the Supplier in good and resaleable condition.
- 6.3 If a request is accepted by the Supplier, the Supplier may at its discretion:
- (a) refund the original invoice amount, less any tax, duties and a handling fee of 35% of the invoice amount or such other amount as the Supplier notifies the Customer of in writing; or
 - (b) offer the Customer credit in exchange for the relevant Goods, less any tax and duties and a handling fee of 35% of the invoice amount or such other amount as the Supplier notifies the Customer in writing. (The Supplier may, but is not obliged, to waive some or all of the handling fee if the Goods are immediately exchanged for other Goods (at their then current price) of at least equivalent value.)
- 6.4 Goods returned to the Supplier must be accompanied by a completed returns form with a reference number ("**Returns Form**"), available from the Supplier upon request. Goods that are returned to the Supplier without a Returns Form will not be registered as received.
- 6.5 It is the Customer's responsibility and risk to ensure Goods are safely received by the Supplier at the Supplier's premises at Unit 25, Mitre Bridge Industrial Estate, Mitre Way, London, W10 6AU, or such other location as may be agreed in writing with the Supplier and the Customer shall be responsible for all such costs.

Defective Goods

- 6.6 The Customer may reject any Goods that do not comply with clause 5.1, provided that it provides written notice of rejection to the Supplier within five Business Days of delivery (in the case of a defect that is apparent, or would be reasonably apparent, on normal visual inspection) or within a reasonable time (and in any event within ten Business Days) of the defect having become apparent (in the case of a latent defect).
- 6.7 If the Customer rejects Goods in accordance with clause 6.6, the Supplier shall, as the Customer's sole remedy, choose to repair or replace the defective Goods, or refund the price of the defective Goods, less i) an equitable sum to represent the use of the defective Goods that the Customer has enjoyed, and ii) a handling fee, provided that:
- (a) the Customer notifies the Supplier of the relevant defect, in accordance with clause 6.6, within the Warranty Period;
 - (b) the Customer (if asked to do so by the Supplier) returns the Goods to the Supplier's place of business, at the Customer's cost;
 - (c) the Supplier is given a reasonable opportunity to examine the Goods; and
 - (d) relevant tests carried out by the Supplier confirm the fault or problem reported by the Customer, and such fault is not caused by an act or omission of Customer, including as mentioned in 5.2.
- 6.8 If the defect in the Goods is found not to be caused by the Supplier, a minimum repair charge of £50 plus VAT per Good applies, whether within or outside the Warranty Period, unless otherwise notified by the Supplier to the Customer. Repairs will only be conducted on receipt of written confirmation from Customer, and repair charges will be invoiced and paid in accordance with clause 9.
- 6.9 On completion of any repairs, the Supplier will ship the repaired Goods to the Customer without charging any cost of delivery (but the Customer shall remain responsible for any import duty, as set out in clause 4.13(b)).
- 6.10 Goods returned to the Supplier must be accompanied by a completed returns form with a reference number ("**Returns Form**"), available from the Supplier upon request. Goods that are returned to the Supplier without a Returns Form will not be registered as received.
- 6.11 The Customer shall ensure that the Goods are available for collection at the location agreed with the Supplier, unless otherwise agreed by the parties.
- 6.12 The Customer's sole remedy for defective Goods shall be provision of the Warranty in the Warranty Period, and the Supplier shall have no other liability in respect of the Goods, to the maximum extent permitted by applicable law.

6.13 Clauses 6.6 to 6.12 (inclusive) shall apply to any repaired or replacement Goods supplied by the Supplier, provided that no remedy shall be provided where the amount of time that has passed since the Customer's receipt of the original Good exceeds the typical shelf life of that Good.

7. Title and risk

7.1 The risk in each Good shall pass to the Customer on completion of delivery.

7.2 Title to each Good shall not pass to the Customer until:

- (a) the Supplier receives payment in full (in cleared funds) for all Goods that are the subject of the Contract, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf and from the date of delivery;
- (d) notify the Supplier immediately if the Customer becomes subject to an Insolvency Event;
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time; and
- (f) ensure the Supplier (and its representatives) can enter into any premises where the relevant Goods are stored in order to recover them.

7.4 Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods, provided that no Insolvency Event has occurred. However, if the Customer resells the Goods before the Supplier receives payment for them:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

7.5 If an Insolvency Event occurs, the Customer shall, without limiting any other right or remedy available to the Supplier:

- (a) deliver up to the Supplier all Goods in the possession or custody of the Customer or its agents or representatives that have not been resold, or irrevocably incorporated into another product; and
- (b) ensure that the Supplier and/or its representatives may enter any premises of the Customer or of any third party where the Goods are stored in order to recover and take possession of them.

8. Customer's obligations

8.1 The Customer shall:

- (a) ensure the Order and any information it provides in the Goods Specification are complete, accurate and clear;
- (b) co-operate and assist the Supplier in all matters relating to ensuring that the Supplier can meet its obligations under the Contract;
- (c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Goods, and ensure that such information is complete, accurate and clear in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required for the Goods;
- (e) comply with all applicable laws, including health and safety laws;
- (f) keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- (g) comply with any additional obligations as set out in the Order and/or Goods Specification; and
- (h) act in good faith in all its dealings with Supplier.

8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

- (a) the Supplier shall have the right to suspend any delivery of Goods until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve the Supplier from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. Charges and payment

9.1 The price for each Good:

- (a) shall be the price set out in the Order Form or, if no price is quoted, the price set out in the Supplier's published price list that is available on request as at the date of the Order; and
- (b) is inclusive of all packaging, insurance, delivery charges, but not any import duties and taxes.

9.2 The Supplier may submit its invoice:

- (a) for Goods at any time after notifying the Customer that the Goods have been shipped or are available for collection (as applicable); and
- (b) for other costs or work (such as those incurred pursuant to clauses 4.6, 4.9 and/or 6.8) as soon as they are provided.

9.3 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the relevant invoice, unless otherwise agreed by the parties in writing; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier,

and time for payment of each invoice due by the Customer shall be of the essence.

9.4 All amounts payable by the Customer under the Contract are, unless otherwise expressly stated, exclusive of any applicable value added tax chargeable from time to time (VAT**), which shall be payable in addition and at the same as the underlying invoice.**

9.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, the Supplier may charge, and the Customer shall pay, interest on the overdue sum from the due date until payment of the overdue sum, both before and after judgment. Interest under this clause 9.5 will accrue each day on a compound basis at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is 0% or less.

- 9.6 The Customer agrees to indemnify the Supplier on demand for any and all costs, liabilities and losses suffered or incurred as a result of the Customer's failure to ensure all import taxes and duties, and shipping and storage charges, are paid.
- 9.7 If payments are not received by the relevant due date, all orders to the Customer's account may be stopped until payment of all overdue invoices is received.
- 9.8 All amounts due under the Contract shall be paid in full without set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). If any withholding is made, the Customer shall ensure that the Supplier receives such sum (in full) that the Supplier would have received but for the withholding.

10. Intellectual property rights

All Intellectual Property Rights in or arising out of or in connection with the Goods and the Goods Specification (other than Intellectual Property Rights in any materials provided by the Customer) shall remain vested in and remain the sole property of the Supplier.

11. Data protection and data processing

- 11.1 For the purposes of this clause 11, the following words shall have the following meanings:
- (a) **"Customer Personal Data"** means personal data provided by or on behalf of the Customer or otherwise obtained or generated by the Supplier on the Customer's behalf in connection with the provision of the Goods;
 - (b) **"Supplier Personal Data"** means personal data provided to Customer by or on behalf of Supplier in connection with the provision of the Goods (excluding any Customer Personal Data);
 - (c) **"Shared Personal Data"** means Customer Personal Data and/or Supplier Personal Data; and
 - (d) References to **"controller"**, **"data subject"**, **"personal data"**, **"processor"**, **"processing"**, **"personal data breach"** and **"supervisory authority"** shall have the same meaning as defined in the GDPR.
- 11.2 The Customer and the Supplier acknowledge that for the purposes of the GDPR and any other applicable Data Protection Legislation, the Customer and the Supplier shall each be considered independent data controllers in respect of any Shared Personal Data.
- 11.3 Each party agrees that it will process the Shared Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments, and shall comply with its obligations under applicable Data Protection Legislation.

- 11.4 Without prejudice to its obligations in clause 11.3, each party shall in respect of its processing of any Shared Personal Data:
- (a) only process that Shared Personal Data for the purposes of or in connection with the provision of the Goods and not for any other purpose;
 - (b) promptly provide such necessary and reasonable assistance and co-operation to the other party and to any supervisory authority, in connection with the other party's compliance with its obligations under the Data Protection Legislation;
 - (c) process the Shared Personal Data in a manner that ensures appropriate security of the data in accordance with Article 32 of the GDPR;
 - (d) without undue delay (and in any event with 24 hours), notify the other party and provide such co-operation, assistance and information as the other party may reasonably require if it becomes aware of any personal data breach or data subject complaint relating to the Shared Personal Data.
- 11.5 The parties shall, at the request of the other, work together in good faith to negotiate and execute such other documents as may be reasonably necessary to allow each party to comply with its obligations under Data Protection Legislation.
- 11.6 Further information relating to the Supplier's processing of personal data can be found in their privacy policy, at the following link: <https://www.aiphone.co.uk/privacy-policy/>.

12. Confidentiality

- 12.1 Each party, except as permitted by clause 12.2., shall keep secret and confidential all information disclosed to it (whether in writing, verbally or otherwise) under or in connection with the Contract which is of a confidential or proprietary nature ("**Confidential Information**"). The receiving party shall not use, disclose, exploit, copy or modify such Confidential Information except for the purposes of the proper performance of the Contract or with the prior written consent of the other party. Any such disclosure shall be made subject to obligations equivalent to those set out in these Terms.
- 12.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 12; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

12.4 Notwithstanding clauses 12.1 and 12.3, the Supplier may make announcements relating to the existence of the Contract or its subject matter, and make press releases or other publicity and enter into advertising and marketing in relation to the Contract.

13. Limitation of liability: THE CUSTOMER'S ATTENTION IS DRAWN TO THIS CLAUSE.

13.1 Nothing in these Terms shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

13.2 Subject to clause 13.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use and/or damage to software, data or information;
- (f) loss of or damage to goodwill; and/or
- (g) any indirect or consequential loss.

13.3 Subject to clause 13.1, and without prejudice to clause 6.7, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to 50% of the total charges paid under the Contract.

13.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.5 Save to the extent expressly set out in the Contract, all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise are hereby excluded to the fullest extent permitted by law.

13.6 This clause 13 shall survive termination of the Contract.

14. Termination

14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.2 The Supplier may terminate the Contract with immediate effect and without penalty by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Customer or any of its parent companies (direct or indirect).

14.3 The Supplier may suspend deliveries of Goods under the Contract and/or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, or the Customer becomes subject to any Insolvency Event (or the Supplier reasonably believes that the Customer is about to become subject to any of them).

15. Consequences of termination

15.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and Goods which have not been fully paid for, including pursuant to clause 15.1(a). If the Customer fails to do so, the Customer shall ensure that the Supplier and its representatives can enter the premises where the Goods are located and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

16. Force majeure

16.1 Neither party shall be in breach of the Contract or liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control including failure of supply, shortage of materials and delays in shipment (a "**Force Majeure Event**").

16.2 The Supplier will take all reasonable steps to deliver the Goods as agreed with the Customer, but will not be responsible for any unavailability or delay caused by Covid19 and/or any other epidemic or pandemic.

17. Assignment and other dealings

17.1 The Supplier may assign, charge and/or subcontract any or all of its rights and obligations under the Contract.

17.2 The Customer shall not assign, transfer, charge, subcontract, or otherwise deal with any of its rights and/or obligations under the Contract.

18. Notices

- 18.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified on the Order Form.
- 18.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.
- 18.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

19. General

- 19.1 **Severance:** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 19.2 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.3 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 19.4 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances,

warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party acknowledges that in entering into the Contract it has not relied on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

- 19.5 **Third parties' rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 19.6 **Variation.** No variation of the Contract shall be effective unless it is agreed in writing and signed by the parties.
- 19.7 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 19.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.