

## 1. Definitions and Interpretation

1.1. In these Terms and Conditions the following expressions will have the following definitions and interpretation.

Business Day	means any day other than a Saturday, Sunday, public or bank holiday in the UK.
Buyer	means the person, firm, company or other corporation whose order for the Goods is accepted by the Seller.
Confidential Information	means all confidential information (however recorded, preserved or disclosed) which has been, is now or at any time after the date of the Order is disclosed to or made available by the Seller to the Buyer or to any company within the Buyer's group or to any other person at the request of the Buyer including but not limited to a) the fact that contract negotiations take place and the status of those; b) the terms of the Order; c) the purpose of the Contract; d) any Technology; e) any information that would be regarded as confidential by a reasonable business person relating to a) to d) or to the business affairs, customers, clients, suppliers, business plans, intentions or market opportunities of the Seller; the operations, processes, product information, Intellectual Property Rights, trade secrets, software, plans, databases or spreadsheets of the Seller; f) any information that has commercial value to the Seller and which, if disclosed, is likely to cause real or significant damage to it; and g) any information or analysis derived from Confidential Information. Confidential Information shall not mean any information that h) is or becomes generally available to the public other than as a result of its disclosure in breach of contract; i) is accessible from public sources or is or becomes generally available to third parties other than as a result of disclosures made in breach of contract or of any other undertaking of confidentiality addressed to the party to whom the information relates; j) was available to the Buyer or made available or being in the possession of the Buyer free of any restriction of confidentiality as to its use or disclosure prior to it being so disclosed; or k) the Buyer is able to prove from its records to have been independently developed by it without reference to any information it has received from the Seller pursuant to the contract; or l) becomes available to the Buyer from a source other than the Seller, which source is not bound by any obligation of confidentiality in relation to such information; or m) was lawfully in the possession of the Buyer before the information was disclosed to it by the Seller; or n) the parties agree in writing is not confidential or may be disclosed.
Contract	means the Contract between the Seller and the Buyer for the Sale of Supplies formed in accordance with clause 2.
Delivery Location	the place where delivery of the Goods shall take place, as defined in clause 5.1.
Event of Default	means an event specified as such in clause 10.2.
Force Majeure	means any act, event or omission beyond the Seller's reasonable control, including but not limited to acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and interruption or failure of utility service.
Goods	means any goods materials and/or goods upon which Services have been rendered which are to be provided by the Seller to the Buyer, as set out in the Order Acknowledgement.
Intellectual Property Rights	mean patents, utility models, rights to inventions, designs, copyright and related rights, moral rights, database rights, trademarks and service marks and related goodwill, trade names (whether registered or unregistered), and rights to apply for registration, proprietary rights in business names and/or 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, right 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.
ITAR	means US Department of State International Traffic in Arms Regulations.
Order	means the purchase order issued by the Buyer for acceptance by the Seller.
Order Acknowledgement	means the Seller's document issued to the Buyer accepting an Order or Order amendment of the Buyer.
Party	means each of the Seller and the Buyer and includes their successors in title, permitted assignees and permitted transferees.
Seller	means Pearson Engineering Limited, a company registered in England and Wales with company number 01876136 and having its registered office at Armstrong Works, Scotswood Road, Newcastle upon Tyne, NE15 6UX.
Services	means all or any of the work or services as set out in the Order Acknowledgement
Standard Conditions	means these Pearson Engineering Limited Standard Conditions of Sales (2015 edition).
Supplies	mean the Goods and/or Services which are provided by the Seller to the Buyer pursuant to the Contract.
Technology	means information which is required for the development, production or use of the Goods (including any software) including but not limited to such whose export is legally controlled or information which is required for the design of, the assembly of components into, and the operation, maintenance and repair of complete production installations of the Goods whose export is legally controlled and shall include, but not be limited to, blueprints,

	plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions in connection with the same and whether or not it is written, printed, recorded, saved electronically, spoken or passed on in some other way. For the purposes of these Standard Conditions "development", "production", or "use" are defined in the Export Control Order 2008.
VAT	means value added tax as provided for in the UK Value Added Tax Act 1994.
Warranty Period	the period defined in clause 7.1.

## 2. Formation of Contract

- 2.1 The Contract will be formed upon these Standard Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer purports to impose or incorporate under any purchase order, confirmation of order or similar document, or which are implied by trade, custom, practice or course of dealing.
- 2.2 Each Order or acceptance of a quotation will be deemed to be an offer by the Buyer to purchase Supplies in accordance with these Standard Conditions. The Contract is formed when the Order is accepted by Seller by way of a written Order Acknowledgement. No contract will come into existence until a written Order Acknowledgement is issued by Seller.
- 2.3 Any quotation is valid for a period of thirty days only from its date (or such other period as may be specified in the quotation), provided the Seller has not previously withdrawn it, but no contract shall be created by acceptance by the Buyer of such a quotation. A Contract shall only be created by the Seller issuing a written Order Acknowledgement to the Buyer as set out in clause 2.2.
- 2.4 The Buyer must ensure that the terms of its Order are complete and accurate.
- 2.5 If no Order Acknowledgement has been issued by the Seller, acceptance of delivery of the Goods or commencement of the performance of the Services shall be deemed conclusive evidence of the Buyer's acceptance of these Standard Conditions.
- 2.6 Save as set out in the Contract, these Standard Conditions shall not be varied or amended except in writing and signed by a duly authorised officer of the Seller.

## 3. Order of Precedence

- 3.1 In the event of any conflict, the following order of precedence shall apply:
  - 3.1.1 the Order Acknowledgement and any documents referenced therein;
  - 3.1.2 these Standard Conditions.

## 4. Price and Payment

- 4.1 The price for the Goods shall be the price set out in the Order. Unless otherwise stated in the Order Acknowledgement, the price of the Goods is exclusive of all costs and charges of packaging, insurance or transport of the Goods which shall be paid by the Buyer.
- 4.2 The charges for Services shall be on a time and materials basis:
  - 4.2.1 The charges shall be calculated in accordance with the Seller's fee rates, as advised by the Seller from time to time; and
  - 4.2.2 The Seller shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Seller engages in connection with the Services including, but not limited to travelling expenses, hotel costs, subsistence and any associated expenses and for the cost of services provided by third parties and required by the Seller for the performance of the Services, and for the cost of any materials.
- 4.3 The Seller reserves the right to:
  - 4.3.1 increase its fee rates for charges for Services, provided that such charges cannot be increased more than once in any twelve month period. The Seller will give the Buyer written notice of any such increase three months before the proposed date of the increase. If such increase is not acceptable to the Buyer, it shall notify the Seller in writing within four weeks of the date of the Seller's notice and the Seller shall have the right without limiting its other rights or remedies to terminate the Contract by giving four weeks' written notice to the Customer; and
  - 4.3.2 increase the price of the Goods, by giving notice to the Buyer at any time before delivery, to reflect an increase in the cost of the Goods to the Seller that is due to:
    - 4.3.2.1 any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
    - 4.3.2.2 any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
    - 4.3.2.3 any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 4.4 Subject to clause 4.14, Seller may invoice the Buyer:
  - 4.4.1 for the Goods at such time as set out in the Order Acknowledgment or at any time after delivery; and
  - 4.4.2 for the Services on or at any time after performance commences.
- 4.5 Payment shall be made in the currency stated in the invoice and shall be due thirty days after the date of the invoice.
- 4.6 No payment will be deemed to have been received until Seller has received payment in full and cleared funds.
- 4.7 All sums payable to Seller under the Contract will become due immediately upon termination of the Contract.
- 4.8 Time for payment shall be of the essence of the Contract.
- 4.9 All amounts payable by the Buyer under the Contract are exclusive of value added tax, any similar sales tax or any tax that replaces such sales taxes. Any such tax payable in relation to any such amounts shall be paid in addition to those amounts. If the Buyer is required under any applicable law to withhold or deduct any amount from the payments due to the Seller, the Buyer shall increase the sum it pays to the Seller by the amount necessary to leave the Seller with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
- 4.10 Subject to clause 4.9, all payments to be made by the Buyer under the Contract will be made in full without any set-off, counterclaim, restriction or condition and without any deduction or withholding for or on account of any counterclaim.
- 4.11 The Seller may appropriate any payment made by the Buyer to such of the outstanding invoices as the Seller thinks fit, despite any purported appropriation by the Buyer.

- 4.12 If any sum payable under the Contract, or any other agreement between the Buyer and the Seller, is not paid when due then, without prejudice to the Seller's other rights under the Contract, the Seller is entitled to suspend delivery of the Goods or performance of the Services until the outstanding amount has been received by the Seller from the Buyer.
- 4.13 If any sum payable under the Contract is not paid when due then, without prejudice to the Seller's other rights under the Contract, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at three per cent per annum above the Bank of England base rate from time to time.
- 4.14 Payment shall be made by the Buyer as stated in the Seller's quotation and confirmed in the Order Acknowledgement. If no particular payment terms were confirmed in the Order Acknowledgement, Payment shall be made by the Buyer as follows:
- 4.14.1 a prepayment of 100% (one hundred per cent) of the total Contract price shall be payable on receipt of the Seller's pro-forma invoice. Payment of such sum shall be made by the Buyer to the Seller by either bank transfer or by banker's draft and in each case the Buyer shall ensure that the sum is received in cleared funds in the Seller's account within 30 days of the date of the pro-forma invoice; or
- 4.14.2 payment of the Contract price or any instalment thereof shall be made by an irrevocable letter of credit, in all respects acceptable to the Seller, and confirmed by a major UK clearing bank in favour of the Seller.

## 5. Delivery

- 5.1 Unless otherwise expressly specified in the Order Acknowledgement, the Buyer shall collect the Goods from the Seller's premises ("Delivery Location") by providing at its expense adequate and appropriate transport from the Delivery Location during the Seller's usual business hours at any time after the Seller has notified the Buyer that the Goods are ready for collection.
- 5.2 Unless otherwise agreed in the Order Acknowledgement, delivery of the Goods shall be completed on completion of loading by the Seller onto the Buyer's transport at the Delivery Location.
- 5.3 Delivery times for the supply of the Goods by the Seller in its quotation, Order Acknowledgement or otherwise are intended as estimates only and are not therefore to be treated as being of the essence of the Contract or binding on the Seller. The Seller shall not in any event be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.4 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Buyer's failure to provide the Seller with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 5.5 The Seller may deliver the Goods in instalments which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 5.6 If the Buyer fails to take delivery of the Goods within ten Business Days of the Seller notifying the Buyer that the Goods are ready for collection or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, delivery of the Goods shall be deemed to have been completed at 9.00 am on the eleventh Business Day following the day on which the Seller notified the Buyer that the Goods were ready, and the Seller shall:
- 5.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) for the storage; and
- 5.6.2 if, fifteen Business Days after the Seller notified the Buyer that the Goods were ready for collection, the Buyer has not taken delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods at the best price readily available and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price of the Goods under the Contract or charge the Buyer for any shortfall below the price of the Goods under the Contract.

## 6. Force Majeure

- 6.1 The Seller shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under a Contract as a result of Force Majeure.
- 6.2 If the Seller's performance of its obligations under the Contract is affected by Force Majeure, it will give written notice to the Buyer, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure.
- 6.3 If the Force Majeure event continues for more than ninety days, either party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than thirty days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.

## 7. Warranty

- 7.1 The Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their delivery ("Warranty Period"). Notwithstanding this, the Seller reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements, or which do not materially affect the nature or quality of the Goods, and the Seller shall notify the Buyer in such an event.
- 7.2 Subject to clause 7.3, if
- 7.2.1 the Buyer gives notice in writing in accordance with clause 7.4 that some or all of the Goods do not comply with the warranty set out in clause 7.1,
- 7.2.2 the Seller is given a reasonable opportunity of examining such Goods; and
- 7.2.3 the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost, the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 7.3 The Seller shall not be liable for the Goods failure to comply with the warranty in clause 7.1, if:
- 7.3.1 the Buyer makes any further use of such Goods after giving notice in accordance with clause 7.2.1,
- 7.3.2 the defect arises from any drawing, design or specification supplied by the Buyer; or

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- 7.3.3 the defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval.
- 7.4 Any claim by the Buyer that within the Warranty Period some or all of the Goods do not comply with clause 7.1, shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 7.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Standard Conditions, the Seller shall be entitled to repair or replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price). If the Seller chooses to repair or replace the Goods the Seller will only be responsible for any reasonable and foreseeable costs for returning the goods to the Sellers' premises in order to carry out the work. The Seller shall be entitled to carry out any repair or replacement work at the location of the Goods provided that the Buyer has recovered the Goods to a safe location and has provided access and facilities as required by the Seller in order to carry out the repair or replacement work. In such an event, the Seller shall be entitled to recover any reasonable, additional costs incurred in undertaking the work at a location other than the Sellers' premises.
- 7.6 Except as provided in this clause 7, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.
- 7.7 The terms of these Standard Conditions shall apply to any repaired or replacement Goods supplied by the Seller under clause 7.2

**8. Supply of Services**

- 8.1 The Seller shall provide the Services to the Buyer in accordance with the specifications set out in the Order Acknowledgement in all material respects.
- 8.2 The Seller shall use reasonable endeavours to meet any performance dates for the Services specified in the Order Acknowledgement or as otherwise agreed by the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Seller shall have the right to make any changes to the 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 the Seller shall notify the Buyer in any such event.
- 8.4 The Seller warrants to the Customer that the Services will be provided using reasonable care and skill.

**9. Limitation of Liability**

- 9.1 Nothing in these Standard Conditions shall limit or exclude the Seller's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 9.1.2 fraud or fraudulent misrepresentation;
- 9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- 9.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).
- 9.2 Subject to clause 9.1:
- 9.2.1 the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 9.2.2 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall under no circumstances exceed the value of the Contract.
- 9.3 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.
- 9.4 This clause 9 shall survive termination of the Contract.

**10. Termination, Events of Default & Remedies**

- 10.1 The Seller may at any time terminate the Contract for an Event of Default on giving the Buyer written notice.
- 10.2 Each of the following events is an Event of Default:
- 10.2.1 the Buyer commits a material breach of its obligations under the Contract and, if that breach is capable of remedy, the Buyer fails to remedy that breach within thirty (30) days of the Seller giving written notice to it requiring remedy; or
- 10.2.2 the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- 10.2.3 a resolution is passed, a notice is given, a petition is filed, or an order is made, for or in connection with the winding-up or administration of the Buyer (unless in each case it is a voluntary solvent winding-up, reconstruction, amalgamation or reorganisation or part of a solvent scheme of arrangement); or
- 10.2.4 the Buyer agrees to any kind of composition, rescheduling, scheme, compromise or arrangement involving it and its creditors generally (or any class of them) as a result of financial difficulties; or
- 10.2.5 any administrative or other receiver or any manager of all or substantially all of the assets of the Buyer is appointed, a notice of intention to appoint an administrator is given or a corresponding application is made to court; or an encumbrancer takes possession of, or any execution or distress is levied against, all or substantially all of the assets of the Buyer and which is not paid out or discharged within fourteen (14) days after such appointment, taking possession or levy; or
- 10.2.6 the holder of a qualifying charge over the assets of the Buyer has become entitled to appoint or has appointed an administrative receiver; or
- 10.2.7 a person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over its assets;

- 10.2.8 an event occurs, or proceedings are taken, with respect to the Buyer in any jurisdiction to which it is subject that has an equivalent or similar effect to any of the events mentioned in clause 10.2.2 to 10.2.7
- 10.2.9 the Buyer is acquired by or merged with any third party or any change of control shall occur; or
- 10.2.10 the Buyer suspends or threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.
- 10.3 On or at any time after the occurrence of an Event of Default, the Seller shall be entitled (without prejudice to any other right or remedy) on giving written notice to the Buyer to exercise any one or more of the following rights or remedies:
- 10.3.1 to terminate the Contract in accordance with clause 10.1, reduce, reschedule or cancel any of the Supplies or to refuse to accept the Order of any further Supplies and in each case without having any liability to the Buyer;
- 10.3.2 to recover such damages as it may have sustained in connection with or as a result of such Event of Default; and/or
- 10.3.3 to terminate the Order in whole or in part.
- 10.4 Without prejudice to any other right or remedy which the Seller may have, whether or not set out in this Agreement, the Seller may by notice in writing served on the Buyer terminate the Contract immediately if:
- 10.4.1 the Buyer commences the manufacture of any Goods which are similar to or may compete with the Goods.
- 10.4.2 the Buyer does not comply with all requests for information and certification required by the Seller to meet its obligations under UK export control requirements as they apply to the Supplies provided under the Contract.
- 10.5 Upon termination, howsoever arising, the Buyer shall return all of the Seller's information, tooling and data forthwith to the Seller.
- 10.6 Termination of an Order or a Contract shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or which implicitly survives, termination.
- 10.7 These Standard Terms shall be in addition to the Seller's statutory and common law rights and shall not be a substitution for them.

## 11. Variation and Cancellation

- 11.1 The Seller shall be under no obligation whatsoever to accept any variation or cancellation of an Order once accepted by Order Acknowledgement. However, if the Seller at its complete discretion agrees in writing to accept any such variation or cancellation the Seller may levy such charges as it, in its absolute discretion, sees fit.

## 12. Confidentiality

- 12.1 Except with the prior written consent of the disclosing party, a recipient party shall not disclose any Confidential Information to any person other than a person employed by the recipient party in the carrying out of the Contract. Any such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purpose of the Contract.
- 12.2 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.2, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 12.3 Unless otherwise agreed by the disclosing party, the recipient party shall not use or permit any third party to use such documents or such information or any document or information generated by the recipient party under the Contract for any purpose whatsoever other than the fulfilment of the Contract.
- 12.4 All documents, including (without prejudice to the generality) specifications, drawings, plans or other data and any information containing, reflecting, incorporating or based on a party's Confidential Information, shall be returned to the disclosing party on completion of the Contract or upon request of the disclosing party; and be erased from the recipient party's computer and communication systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally possible) provided that a recipient party may retain documents and materials containing, reflecting incorporating or based on the disclosing party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to any such documents and materials retained by a recipient party.
- 12.5 The provisions of this clause 12 shall survive termination of the Contract, howsoever arising.

## 13. Notices

- 13.1 Any notice under the Contract sent by one party to the other shall be in writing and shall be sent to a UK destination by first class post using recorded delivery and otherwise by courier service to its address set out in the Contract or to such other address as may from time to time be notified by the one to the other and shall be deemed to be delivered two (2) business days after posting in the UK and otherwise as recorded by the courier service. E-mail or facsimile transmissions will not be an acceptable means of sending notices.

## 14. Intellectual Property Rights

- 14.1 The Buyer represents and warrants that anything done by the Seller or its suppliers in relation to the Supplies on the basis of any specifications provided by the Buyer will not infringe any Intellectual Property Rights of a third party.
- 14.2 The Buyer shall indemnify and hold the Seller harmless against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for any infringement or alleged infringement of any Intellectual Property Rights owned or controlled by a third party arising out of or in connection with the Supplies on the basis of any specifications provided to the Seller by the Buyer.
- 14.3 All Intellectual Property Rights, designs and information relating to the Supplies shall vest in and be the absolute property of the Seller.
- 14.4 If the Buyer provides or utilises any materials in an electronic form or format (including e-mails and computer programs) for or in connection with the provision of Supplies under the Contract, the Buyer warrants that each such materials shall be free from viruses, bugs and logic bombs or other unauthorised, malicious or malignant code, program, routine or software protocol which disables, disrupts, restricts, slows down, impedes or otherwise obstructs the proper performance and operation of a computer system or any application run on such system.

- 14.5 No right or licence is granted to the Buyer in respect of existing or future Intellectual Property Rights of the Seller, except (i) the right to use or resell the Goods supplied under the Contract; (ii) the right to use the outputs of any Services in the ordinary course of its business and for their agreed/intended purpose; and (iii) the right to use an Seller software supplied under the Contract solely for the use of the Goods with which such software is supplied and (where applicable) in accordance with clause 14.8.
- 14.6 The Buyer will not without the Seller's prior written consent allow any trademarks of Seller or other words or marks applied to the Goods to be obliterated, obscured or omitted nor add any additional marks or words.
- 14.7 The Buyer shall not cause or permit the reverse engineering, disassembly, or decompilation of the Goods or any software or otherwise cause or permit any attempt to derive, obtain or modify the source code of any software, except to the extent permitted by law.
- 14.8 If any Seller's software is subject to a separate license agreement between Buyer and Seller, then, notwithstanding the provisions of clause 3, the terms of such separate license agreement shall supersede the terms of any Contract insofar as they relate to the licensing of such Seller software.
- 14.9 The Buyer acknowledges that, in respect of any third party Intellectual Property Rights, the Buyer's use of any such Intellectual Property Rights is conditional on the Seller obtaining a written licence from the relevant licensor on such terms as will entitle the Seller to license such rights to the Buyer.

## 15. Risk and Title

- 15.1 Risk of damage to or loss of the Goods will pass to the Buyer on completion of delivery in accordance with clause 5.2.
- 15.2 Ownership of the Goods (excluding software) will not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
- 15.2.1 the Goods; and
- 15.2.2 all other sums which are or which become due to the Seller from the Buyer on any account.
- 15.3 Until ownership of the Goods (excluding software) has passed to the Buyer, the Buyer must:
- 15.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;
- 15.3.2 store the Goods (at no cost to the Seller) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
- 15.3.3 not remove, destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 15.3.4 maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Supplier from the date of delivery, and will whenever requested by the Seller produce a copy of the policy of insurance;
- 15.3.5 notify the Seller immediately if it becomes subject to any of the events listed in clause 10.2.2 to 10.2.8 and
- 15.3.6 give the Seller such information relating to the Goods as the Seller may require from time to time.
- 15.4 The Buyer may resell the Goods (or, in the case of software, sublicense the software) before ownership has passed to it solely on the following conditions:
- 15.4.1 any sale will be effected in the ordinary course of Buyer's business;
- 15.4.2 any such sale will be on the Buyer's own behalf and the Buyer will deal as principal and not as the Seller's agent; and
- 15.4.3 title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.
- 15.5 The Buyer's right to sell the Goods will terminate immediately if any of the circumstances set out in clause 10.2.2 to 10.2.8 occur. In such a case, the Seller may at any time:
- 15.5.1 Require the Buyer to deliver up all the Goods in its possession which have not been resold or irrevocably incorporated into another product; and
- 15.5.2 if the Buyer fails to do so promptly, enter any premises of the Buyer or any third party where the Goods are stored in order to recover them.
- 15.6 Where the Seller is unable to determine whether any Goods are the goods in respect of which Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
- 15.7 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this clause 15 will remain in effect.

## 16. Indemnity

- 16.1 The Buyer shall indemnify and hold the Seller harmless against any and all liability, loss, claims, costs, expenses or damages of any nature whatsoever incurred by the Seller as a result of or in connection with:
- 16.1.1 the Buyer's breach of the Contract;
- 16.1.2 any tortious (including negligent) acts, omissions or defaults of the Buyer or its employees, agents or subcontractors in connection with the provision of the Supplies; and
- 16.1.3 the Buyer's breach of any of its statutory obligations.
- 16.2 Nothing in the Order shall exclude or limit the liability of either party to the other for death or personal injury resulting from its negligence.
- 16.3 The provisions of this clause 16 shall survive termination of the Contract, howsoever arising.

## 17. Offset

- 17.1 Unless otherwise agreed by the parties in writing, any offset obligations that the Buyer may have are expressly rejected by the Supplier and shall not in any event be the Seller's responsibility.

## 18. Publicity

- 18.1 The Buyer shall not publicise in any media or public announcement information regarding the terms of the Contract or the Supplies provided without the prior written consent of the Seller.

## 19. Data Protection Act

- 19.1 The Buyer shall take such appropriate technical and organizational measures as are necessary to comply with the following legislation to protect against unauthorized or unlawful processing of Seller data and against accidental loss or destruction of, or damage to, Seller data:
- 19.1.1 the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
- 19.1.2 the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003; and
- 19.1.3 all other applicable laws and regulations relating to the processing of personal data and privacy.
- 19.2 The Buyer acknowledges that the Seller places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Seller's sites and the security of the Seller's systems. The Buyer also acknowledges the confidentiality of the Seller's data and shall ensure that adequate security measures to safeguard any and all of the Seller's Confidential Information from unauthorised access or use are established and maintained.

## 20. Export & Import

- 20.1 The Buyer acknowledges that the Supplies are subject to UK export control regulations and the Buyer will provide all necessary documentation undertakings and certification that the Seller may reasonably require to comply with all conditions of any export licence currently in force. The Seller will cooperate with the Buyer to obtain any export licenses the Buyer seeks, but obtaining such licenses shall be the exclusive responsibility of the Buyer and the Seller makes no representation or warranty regarding the issuance of export licenses for the Goods. The Seller will not be liable for any delays or costs associated with the Buyer's inability to produce the required documentation or any changes in applicable legislation or licence conditions. The Buyer shall indemnify the Seller against all costs incurred as a result of any such changes in legislation or non-performance of obligations by the Buyer.
- 20.2 The Buyer acknowledges further that the provision of certain Supplies may be subject to U.S. Government export laws and regulations. The Buyer shall not export, re-export, or transfer any Goods or Confidential Information received from the Seller without first obtaining the appropriate US Government approvals, if any.
- 20.3 The Buyer agrees to comply strictly with all export and/or import laws applicable to any Supplies. The Buyer shall promptly notify the Seller of any authorisation requirements under export and/or import laws that may apply to delivery of the Goods to Buyer site(s). The Buyer acknowledges and agrees that the Goods shall not be exported, re-exported, trans-shipped or otherwise transferred to any country for which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or a national or resident thereof, or to any person or entity on the U.S. Department of Treasury List of Specially Designated Nationals, the U.S. Department of Commerce Denied Parties or Entity List, or to any person on any comparable list maintained by the European Union or its member states (collectively, "Denied or Restricted Parties"). The lists of Embargoed Countries and Denied or Restricted Parties are subject to change without notice. Buyer represents and warrants that neither it nor any of their customers or their users is located in, a national or resident of, or under the control of an Embargoed Country or similarly Denied or Restricted Party. Buyer specifically shall obtain all required authorizations from the U.S. (or EU as applicable) Government before transferring or otherwise disclosing technical data or technology to any foreign person.
- 20.4 The Buyer further acknowledges that it understands its obligation to protect EAR or ITAR controlled Goods and Services from unauthorized disclosure or access to foreign person employees or visitors.
- 20.5 In the performance of the Contract, the Buyer understands its obligation to determine whether it will require the use of third party subcontractors to access any technical data, Goods and/or Services. If required, and so far as permitted under the terms of the Contract, the Buyer is responsible for identifying and licensing any activity that requires export authorisation from the Department of Commerce, Bureau of Industry and Security or the Department of State, Directorate of Defense Trade Controls.

## 21. Inducement, Ethics and Anti-Bribery

- 21.1 The Buyer shall and shall ensure that persons associated with it or other persons who are performing services in connection with the Contract shall:
- 21.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption whether in the UK or otherwise ("Relevant Requirements"), including but not limited to the Bribery Act 2010.
- 21.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 21.1.3 comply with the Seller's Code of Ethics and Anti-bribery and Anti-corruption, and Gifts and Hospitality Policies (made available by the Seller ("the Relevant Policy")) and as the Seller may update from time to time;
- 21.1.4 not do, or omit to do, any act that will cause or lead the Seller to be in breach of any of the Relevant Requirements or the Relevant Policy; and
- 21.1.5 promptly report to the Seller any request or demand for any undue financial or other advantage of any kind received by the Buyer in connection with the Contract.

## 22. Assignment & Sub-Contracting

- 22.1 The Seller may at any time assign or transfer all or any of its rights and/or obligations under the Contract without the consent of the Buyer.
- 22.2 The Buyer may not assign or transfer all or any of its rights and/or obligations under the Contract without the prior written consent of the Seller.
- 22.3 The Seller may at its sole discretion sub-contract any of its obligations under the Contract without the prior written consent of the Buyer.

**23. Waiver**

23.1 The failure or delay by a party to enforce or exercise, at any time or for any period of time, any term or any right or remedy to which it may be entitled under the Contract, at law or otherwise shall not be construed as a waiver or relinquishment of such term, right or remedy nor shall it limit or otherwise affect the party's rights to enforce or exercise, in the future, such term, right or remedy. The exercise, by a party, of any of its rights or remedies under the Contract shall be without prejudice to any other rights or remedies to which that party may be entitled under the Contract, at law or otherwise. Neither party shall have any remedy in respect of any untrue statement, made by the other party, upon which that party relied in entering into the Contract, unless such untrue statement was made fraudulently.

**24. Anticipated Non Performance**

24.1 Notwithstanding other provisions in these Standard Conditions, the Seller shall be entitled to suspend the performance of its obligations under the Contract when it is clear from the circumstances that the Buyer is not performing or is unable to perform its obligations. The Seller shall notify the Buyer in writing if it intends to suspend its performance of the Contract.

**25. Severability**

25.1 If any of the provisions of the Contract are found to be invalid, illegal or unenforceable this shall not affect the validity of the remaining provisions. In the event of such occurrence, the parties shall, in so far as it is legally permitted, agree on the replacement of the relevant provision with a valid one achieving the same or a similar purpose.

**26. Entire Agreement**

26.1 The Contract, together with any non-disclosure agreement, confidentiality agreement or other agreement relating to the same subject matter the parties may have entered into separately, shall constitute the entire agreement between the parties with respect to the subject matter of the Contract and supersede any prior discussions, oral or written agreement with respect to the subject matter of the Contract provided that nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

**27. Law & Arbitration**

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

27.2 Subject to the provisions of clause 1.1 above, the parties agree that any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, and any dispute relating to any non-contractual obligations arising out of or in connection with the Contract, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitration shall be English.