



Kiyoo Design Limited trading as Kiyoo Engineering

Legal Information

- Terms and Conditions of Sales
- Terms and conditions of Purchases

Disclaimer

- Web site disclaimer

Registered Office

74a, Station Road East, Oxted, Surrey RH8 OPG

(Please note this is a non-trading address)

Registered in England

Company No 06050500

VAT No 177613094

Disclaimer

The information contained herein is based on our present knowledge and experience and is given in good faith. However, no liability will be accepted by the Company in respect of and action taken by any third party in reliance thereon.

The Company specifically excludes all conditions or warranties expressed or implied by statute or otherwise as to product dimensions, properties and/or their fitness for any particular purpose. Any advice given by the Company to any third party is given for that party's assistance only and without any liability on the part of the Company.

Any contract between the Company and a customer will be subject to the Company's Conditions of Sales. The extent of the Company's liabilities is clearly set out in those conditions. Kiyo Design Limited trading as Kiyo Engineering is not responsible for the content of any extended website to which it may provide links.

Conditions of purchase

1. Interpretation

1.1 In these Conditions:

1.1.1 the following expressions have the following meanings:

"Buyer" means Kiyo Design Limited trading as Kiyo Engineering a private limited company registered in England with limited liability under company number 06050500 whose registered office is at 74A, Station Road East, Oxted, Surrey, RH8 OP8 "Conditions" means the standard terms and conditions of purchase set out in this document.

"Contract" means the contract formed in accordance with clause 2.2 for the supply of the Goods and/or Services, on the terms set out in these Conditions and any documents referred to in them and any special terms agreed in Writing between the parties.

"Deliverables" means all documents, products, pictures, drawings, plans and other materials developed by or on behalf of the Seller as part of or in connection with the Services.

"Delivery Address" means the address stated on the Order or, where none is stated, the address agreed between the parties.

"Goods" means the goods or any part of them set out in the Order.

"Intellectual Property Rights" means patents, rights to inventions, copyright, trademarks, rights in confidential information, domain names, goodwill, database rights and all other registered or unregistered intellectual property rights and similar or equivalent rights which subsist or will subsist now or in future in any part of the world.

"Order" means the Buyer's order for the Goods and/or Services as set out in the Buyer's purchaser order form attached which shall be subject to these Conditions.

"Price" means the price of the Goods and/or the charge for the Services; "Seller" means the person so described in the Order.

"Services" means the services (or any part of them) described in the Order, including any Deliverables.

"Specification" means the specification for the Goods and/or Services set out or referred to in the Order or agreed in writing between the parties, including any relevant drawings, plans or written descriptions.

"Writing" includes fax, email, and comparable means of communication.

1.1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted, or extended at the relevant time.

1.1.3 The headings in these conditions are for convenience only and shall not affect their interpretation.

1.1.4 A person includes a natural person, corporate or unincorporated body.

- 1.1.5 A reference to the "parties" is to the Buyer and the Seller and to a "party" is to either of them.
- 1.1.6 A phrase preceded by the words "including", "include", "in particular" or any similar words or expressions shall be construed as illustrative and shall not limit the sense of the preceding words.
- 1.1.7 "Holding company" and "subsidiary" have the meanings assigned to them in the Companies Act 2006.
- 1.1.8 In relation to a company "group" means that company, any company of which it is a subsidiary (its holding company) and any other subsidiary of such holding company

2. Basis of purchase

- 2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services from the Seller in accordance with the terms of the Order and these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of the Seller accepting the Order in Writing or doing anything consistent with fulfilling the Order, at which point the Contract shall come into existence.
- 2.3 The Buyer may revoke the Order any time before it is accepted by the Seller and the Order will lapse unless unconditionally accepted by the Seller within 7 days of its date.
- 2.4 The Conditions shall apply to the Contract to the exclusion of any terms and conditions that the Seller might seek to impose or incorporate, or which are implied by trade, practice, or course of dealing.
- 2.5 Subject to clause 2.6, no variation to the Order or these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.6 The Buyer may make a change to the Order for Goods and/or Services at any time before the Seller dispatches the Goods or commences performance of the Services, as the case may be, by notifying the Seller. The Price shall be

subject to an adjustment which is equitable and proportionate to the variation of the Order.

2.7 The Contract constitutes the entire agreement between the parties to the exclusion of any other agreement, arrangement or understanding which is made or purported to be made between the Seller and the Buyer, whether written or oral in relation to its subject matter.

2.8 Each party agrees that it has not relied on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Contract and that its only rights and remedies in relation to any representation or warranty set out in the Contract are limited to damages for breach of contract.

3. Specifications and requirements

3.1 The Goods and Services shall correspond with their description in any applicable Specification.

3.2 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the Intellectual Property Rights in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification, other than for the purpose of the Contract.

3.3 In performing its obligations under the Contract, the Seller will comply with all applicable regulations or other legal requirements, allow regulatory authorities to access the Seller's premises at all times and retain without any limitation as to time all documentation and other legally required traceable elements of an Order.

3.3.1 use the best quality goods, materials, standards, and techniques.

3.3.2 not do or omit to do anything that might cause the Buyer to lose any license, authority, consent or permission it relies upon in connection with its business and the Seller acknowledges that the Buyer may rely on the performance of the Services or supply of the Goods.

3.3.3 observe any health and safety rules and regulations and any other security requirements applicable at any of the Buyer's premises.

- 3.3.4 use sufficient number of personnel who are suitably skilled and experienced.
- 3.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services or supply the Goods.
- 3.3.6 obtain and at all times maintain all necessary licenses and consents.
- 3.3.7 notify the Buyer in the event that any non-conforming material is produced including details of the non-conformance, following which the Seller will await the Buyer's instructions/approval in relation to the disposal of the non-conforming material; and
- 3.3.8 cooperate with the Buyer in all matters.
- 3.4 The Seller shall give the Buyer reasonable notice of any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or performance of the Services.
- 3.5 The Seller shall notify the Buyer of any changes:
- 3.5.1 in the Seller's organization and ownership.
- 3.5.2 any changes to the identity of sub-contractors used to fulfil any element of any Order.
- 3.5.3 any change in the Specification or composition of the Goods, their process of manufacture or the location at which they are manufactured,
- and where required will obtain the Buyer's prior written consent to any such changes.
- 3.6 The Seller shall hold all materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Seller (Buyer Materials) in safe custody at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer, and not dispose or use the Buyer Materials other than in accordance with the Buyer's written instructions or authorisation.

3.7 The Seller shall maintain in force, with reputable insurance company insurances sufficient to cover the Seller's potential liability under the Contract and for a period of not less than six years thereafter, and shall, on the Buyer's request, produce both the insurance certificate(s) giving details of cover and the receipt for the current year's premium.

4. Price of the goods and services

4.1 The Price shall be as stated in the Order and, unless otherwise so stated, shall be:

4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and

4.1.2 inclusive of all charges for packaging, packing, shipping, carriage insurance and delivery of the Goods to the Delivery Address (including the charges for any specialist equipment required to deliver the Goods and unload them at the Delivery Address) and any duties, imposts, levies other than value added tax.

4.2 Where the Price of the Services is to be calculated on a time and materials basis, the Seller shall maintain complete and accurate records of the time spent and materials used and allow the Buyer to inspect such records at all reasonable times on request and to take copies of them.

4.3 The Price for the Services, as stated in the Order, shall be the full and exclusive remuneration of the Seller in respect of the Services and, unless otherwise agreed in writing by the Buyer, shall include every cost and expense of the Seller in connection with the Services.

4.4 No increase in the price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.

4.5 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller whether or not shown on its own terms and conditions of sale.

5. Terms of payment

- 5.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods and/or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.
- 5.2 Unless otherwise stated in the Order or agreed in writing between the parties, the Buyer shall pay the Price within thirty-five days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer.
- 5.3 Unless otherwise set out in the Order or agreed in writing between the parties, payment shall be made to a bank account nominated in writing by the Seller.
- 5.4 The Buyer may at any time, without limiting any of its other rights or remedies, set off any liability of the Seller to the Buyer against any liability of the Buyer to the Seller, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.
- 5.5 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 3% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

6. Supply and delivery of goods

- 6.1 The Buyer shall have the right to inspect and test the Goods any time before delivery, and the Seller shall provide the Buyer with all access and facilities reasonably required for such

inspection or testing. No inspection or test carried out by the Buyer shall relieve the Seller of its responsibilities under or in relation to the Contract.

- 6.2 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within a reasonable period of time from inspection or testing, the Seller shall immediately take such steps as are necessary to ensure

compliance. The Buyer shall have the right to conduct further inspections and tests after the Seller has carried out its remedial actions.

6.3 The Seller shall:

6.3.1 deliver the Goods to the Delivery Address, on the date specified in the Order or otherwise agreed between the parties and during the Buyer's usual business hours.

6.3.2 ensure that a packing note quoting the number of the Order accompanies each delivery or consignment of the Goods and is displayed prominently.

6.3.3 deliver with the Goods such delivery notes and advice notes as are specified in the Order or reasonably requested by the Buyer.

6.3.4 ensure, in relation to Goods that carry cast numbers that all separate cast numbers are segregated and marked accordingly both on packing materials and advice notes.

6.3.5 mark the Goods with the Buyer's instructions and any applicable regulations or requirements of the carrier.

6.3.6 in respect of Goods that require a mills certificate or certificate of conformity with relevant British, European and International Standards, deliver a copy of the relevant certificate for each item delivered.

6.3.7 ensure that all documentation in relation to the Order (including, without limitation, delivery notes, advice notes and test certificates) uses the same terminology used by the Buyer in its Order or any associated instructions provided by the Buyer to the Seller; and

6.3.8 ensure that the Goods are properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

6.4 Delivery of the Goods shall be complete upon completion of unloading of the Goods at the Delivery Address.

6.5 Time for delivery of the Goods is of the essence of the Contract.

- 6.6 If the Seller delivers more or less than the quantity of Goods ordered, the Buyer may reject all of the Goods or reject any excess Goods, in which case a pro rata adjustment shall be made to the Price.
- 6.7 The Seller shall give the Buyer reasonable notice of any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or performance of the Services.
- 6.8 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.
- 6.9 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 6.10 The Seller shall not deliver the Goods by instalments without the prior written consent of the Buyer. If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable. Any failures or delays by the Seller in relation to one instalment shall entitle the Buyer to exercise its remedies under these Conditions.

7. Performance of services

- 7.1 The Seller shall perform the Services at the location and on the dates or during the period specified in the Order or otherwise agreed in writing between the parties.
- 7.2 The Seller shall meet any performance dates for the Services specified in the Order or notified to the Seller by the Buyer, acting reasonably.
- 7.3 Time for performance of the Services shall be of the essence of the Contract.

8. RISK AND PROPERTY

- 8.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon completion of delivery to the Buyer in accordance with the Contract.

8.2 The property in the Goods shall pass to the Buyer upon the earlier of completion of delivery of the Goods and the payment by the Buyer of the Price of the Goods. At any time after property in the Goods has passed to the Buyer, the Buyer shall be entitled, but not obliged, to collect the Goods at any time from the Seller's premises.

9. Warranties and liability

9.1 The Seller warrants and represents to the Buyer that the Goods shall:

9.1.1 correspond with their description and any applicable Specification.

9.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed.

9.1.3 be free from defects in design, material and workmanship and shall remain so for a period of 12 months after delivery.

9.1.4 correspond with any relevant Specification or sample.

9.1.5 comply with any relevant British, European and International Standards; and

9.1.6 comply with all statutory requirements and regulations relating to the sale of the Goods.

9.2 The Seller warrants and represents to the Buyer in relation to the Services that:

9.2.1 the Services shall conform with any applicable Specification.

9.2.2 the Deliverables shall be fit for any purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed and free from defects in workmanship, installation, and design.

9.2.3 it shall perform the Services with the best care, skill, and diligence in accordance with best practice and standards of quality as are found in the Seller's industry, profession or trade; and

9.2.4 it shall use the best quality goods, materials, standards, and techniques.

9.3 The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs, and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

9.3.1 breach of any warranty given by the Seller in relation to the Goods and/or Services.

9.3.2 any claim made against the Buyer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Seller, its employees, agents, or subcontractors.

9.3.3 any liability under the Consumer Protection Act 1987 in respect of the Goods.

9.3.4 any act or omission of the Seller or its employees, agents, or sub-contractors in supplying, delivering, and installing the Goods.

9.3.5 any act or omission of any of the Seller's employees, agents, or sub-contractors in connection with the performance of the Services; and

9.3.6 any breach of any of the provisions under clause 13.

10. Remedies

10.1 Without prejudice to any other remedy if any Goods and/or Services are not in accordance with the Contract in any way, including, but not limited to, where Goods and/or Services are defective, do not comply with the Specification or not supplied or not delivered by the delivery date, the Buyer shall be entitled to any one or more of the following remedies, whether or not it has accepted the Goods and/or the Services:

10.1.1 to terminate the Contract with immediate effect on notice to the Seller.

10.1.2 to reject the Goods (in whole or in part) and to return them to the Seller at the Seller's own risk and expense and/or to refuse to accept any

subsequent performance of the Services which the Seller attempts to make.

10.1.3 to require the Seller to repair or replace any rejected Goods, or to provide a full refund of the Price of the rejected Goods (if paid).

10.1.4 to require the Seller to re-perform any rejected Services or to provide a full refund of the Price of the rejected Services (if paid).

10.1.5 to refuse to accept any subsequent delivery of the Goods (in full or by way of instalment) or performance of the Services which the Seller attempts to make.

10.1.6 to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods and/or substitute services from a third party.

10.1.7 to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to carry out any of its obligations, including a failure to meet any agreed dates, under the Contract.

10.1.8 where the Buyer has paid in advance for Services that have not been provided by the Seller, to have such sums refunded by the Seller; and/or

10.1.9 unless agreed in Writing by the Buyer and the Seller, if the Goods and/or Services are not delivered on the due date the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damages for delay one percent of the Price for every week's delay, up to a maximum of ten per cent of the Price.

10.2 These Conditions shall apply to any substituted or remedial services or repaired, or replacement goods supplied by the Seller.

11. Property rights

11.1 The Seller warrants that it has clear and unencumbered title to all Goods and Deliverables transferred to the Buyer under the Contract and that at the

date of delivery of such items, it will have full and unrestricted rights to sell and transfer such items to the Buyer.

11.2 The Seller assigns to the Buyer with full title guarantee and free from all third-party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables. The Seller shall, at the Buyer's request, agree to such further acts and execute such other documents as the Buyer may require to secure the assignment to it of those Intellectual Property Rights.

11.3 All Buyer Materials shall remain the exclusive property of the Buyer.

12. Confidentiality

12.1 A party (the "receiving party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (the "disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products, and services which the receiving party may obtain. The terms of the Contract and the contents of the Order shall constitute confidential information of the Buyer.

12.2 The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

12.3 This clause shall survive termination of the Contract.

13. Anti-bribery

13.1 The Seller shall:

- 13.1.1 comply with all applicable laws, statutes, regulations, and binding codes of practice in relation to anti-bribery and anti-corruption ("Relevant Requirements").
- 13.1.2 comply with any of the Buyer's anti-bribery and anti-corruption policies as are notified to it by the Buyer.
- 13.1.3 have in place and maintain throughout the term of the Contract adequate policies and procedures to ensure compliance with the Relevant Requirements and will enforce them appropriately.
- 13.1.4 procure that any person associated with it (within the meaning of the Bribery Act 2010) who performs services or provides goods in connection with the Contract complies with the Relevant Requirements; and
- 13.1.5 promptly report to the Buyer any demand for any undue financial or other advantage of any kind received by the Seller in connection with the Contract and cooperate with any investigations the Buyer wishes to undertake.
- 13.2 Without prejudice to the general requirements of clause 13.1, the Seller shall not, and shall procure that its officers, employees, contractors and other personnel and representatives do not, in relation to the Contract or any other agreement between the parties, offer any undue or other financial advantage to any person. The Seller warrants that it has not, prior to the date of the Contract, offered or given any undue financial or other advantage of any kind to any person in connection with the Contract or other arrangement or agreement between the parties.
- 13.3 The Seller agrees that its books, records, and all accounts shall accurately reflect any and all transactions with the Buyer whether under this Contract or otherwise, and that the Buyer (and the Buyer's authorised representatives) shall have the right to inspect, audit and to take copies of the Seller's books, records and accounts at any time on prior written notice.
- 13.4 A breach of this clause by the Seller shall be deemed to be a material breach of the Contract.

14. Data protection

14.1 In this clause "data controller", "data processor", "data protection principle", "data subject", "personal data", "process" and "processing" shall have the meanings assigned to those terms in the Data Protection Act 1998 (the "DPA").

14.2 If and to the extent that the Services involve the processing by the Seller of any personal data of which the Buyer is the data controller then the Seller shall:

14.2.1 only process such personal data in accordance with the Buyer's instructions and for the purpose of supplying the Services.

14.2.2 not transfer any such personal data outside the European Economic Area without the prior written consent of the Buyer; and

14.2.3 take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data to ensure the Buyer's compliance with the seventh data protection principle.

15. Termination

15.1 The Buyer shall be entitled to cancel the whole or any part of an Order by giving notice to the Seller at any time prior to delivery or performance whereupon the Seller shall discontinue all work on the Order and the Buyer shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

15.2 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

15.2.1 the Seller commits a material breach of the Contract which is irremediable or which it fails to remedy within 7 days of being notified in writing of the breach by the Buyer.

15.2.2 a winding-up order or bankruptcy order is made against the Seller; or

- 15.2.3 the Seller passes a resolution or decides for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party); or
- 15.2.4 the Seller has appointed to it an administrator or an administrative receiver; or
- 15.2.5 being a partnership, in addition to the above, the Seller suffers bankruptcy orders being made against all of its partners; or
- 15.2.6 an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the Seller's assets.
- 15.2.7 the Seller ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 15.2.8 any arrangement, compromise, or composition in satisfaction of its debts is proposed or entered into by the Seller; or
- 15.2.9 any event analogous to those described in clauses 15.2.2 to 15.2.8 inclusive occurs in relation to the Seller in any jurisdiction in which that other party is incorporated, resident or carries on business.
- 15.2.10 the Seller suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business.
- 15.2.11 the Seller's financial position deteriorates to such an extent that in the Buyer's opinion the Seller's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 15.2.12 the Seller (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
- 15.2.13 the Seller undergoes a change of control (control having the meaning set out in section 1124 of the Corporation Tax Act 2010).

15.3 On termination of the Contract for any reason:

15.3.1 the Seller shall immediately return to the Buyer any confidential information belonging to the Buyer and any Buyer Materials which is in the Seller's possession.

15.3.2 the accrued rights and remedies of each party shall be unaffected.

15.3.3 clauses of these Conditions which are expressly or by implication intended to survive to termination shall continue in full force and effect.

16. General

16.1 The Buyer may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of the Group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Buyer.

16.2 Any member of the Buyer's Group may enforce the terms of a Contract subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. No other third party may enforce the terms of the Contract under that Act.

16.3 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract and where consent is given by the Buyer to the sub-contracting of any element of an Order, the Seller shall ensure that the sub-contractor is legally bound to the relevant terms of the Contract.

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

16.5 The Buyer can only waive a breach of the contract expressly and in Writing. Failure or delay by the Buyer in enforcing any provision of any Contract shall not be construed as a waiver of any of its rights under the Contract. No waiver by the Buyer of any breach of the Contract by the Seller shall be

considered as a waiver of any subsequent breach of the same or any other provision.

16.6 Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not.

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

16.8 The Contract shall be governed by the laws of England, and the Seller agrees to submit to the exclusive jurisdiction of the English courts in relation to any dispute arising under or in connection with the Contract.

17. Import terms

17.1 Where the Goods are supplied for import into the United Kingdom, the following provisions shall (subject to any special terms and conditions agreed in Writing between the Buyer and the Seller) apply:

17.1.1 the Goods shall be delivered (FOB) (within the meaning of Incoterms 2010) to the air or seaport of shipment identified in the Order.

17.1.2 the Seller shall be responsible for arranging export clearance for the Goods.

17.1.3 the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the United Kingdom and for the payment of any duties on them.

18. Record retention

The seller agrees that its books, records and all accounts shall accurately reflect any and all transactions with the Buyer whether under this Contract or otherwise, and the Buyer (and the Buyer's authorised representatives) shall have the right to inspect, audit and to take copies of the seller's books, records and accounts at any time on prior written notice. Records shall be retained indefinitely.

Records shall be stored and maintained in such a way that they are retrievable, in an environment that prevents deterioration, damage and loss. They shall be stored in a manner to mitigate against loss in case of fire, theft, flood, electronic data loss and any other perceived threat/risk.

Records relating to product realisation shall not be disposed of without written permission from the Buyer and should be made available to the Buyer in the event of a cessation of trading.

19. Conflict materials

The Buyer is committed to its responsibilities for respecting human rights in its own operations and global supply chain and expects its suppliers to have in place policies and due diligence measures to ensure that products and components supplied containing conflict minerals (3TG) are DRC-conflict free.

Supply of material against the Buyer's PO confirms a 'DRC conflict-free' source has been used unless the supplier specifically states otherwise.

Acceptance of an order also confirms that the material has been sourced from smelters whose due diligence practices have been validated by an independent third-party audit program, unless the supplier specifically states otherwise.

20. Business continuity

The Buyer expects all suppliers to have in place business continuity plan/s that are robust enough to maintain the delivery of products & services at an agreed level following a disruptive incident.

21. Product safety

Suppliers are responsible for adhering to the requirements of the contract / purchase order to fully mitigate any potential risk to product safety.

22. Ethical dealing

Suppliers will have systems & procedures in place to ensure the highest standards of behavior & ethics when dealing with any product/service relating to the Buyer's product.

23. Counterfeit/Unapproved parts

Suppliers will have systems in place to prevent the shipping of counterfeit/unapproved parts to the Buyer.

24. Modern slavery and human trafficking act

Suppliers will have systems in place to ensure that their supply chain fully complies with all aspects of this act.

Conditions of sale

1. Interpretation

1.1 In these Conditions:

1.1.1 The following expressions have the following meanings:

Buyer means the person who purchases Goods from the Seller under the Contract in accordance with these Conditions.

Goods means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply under the Contract in accordance with these Conditions.

Seller means Kiyo Design Limited Trading as Kiyo Engineering (a private company registered in England with limited liability under company number 06050500, whose registered office is at: 74A, Station Road East, Oxted, Surrey, RH8 OPG;

Conditions means the standard terms and conditions of sale set out in this document.

Contract means the contract formed in accordance with these conditions for the purchase and sale of the Goods which shall comprise these Conditions and any documents referred to in them and any special terms and conditions agreed in Writing between the parties.

Defect means any defect in the Goods which causes the Goods to not conform to the warranty set out in clause 8.1.

Delivery Location means the Seller's premises or, where the Seller has agreed to deliver the Goods to a location other than the Seller's premises, that alternative location.

Force Majeure Event means any event beyond the Seller's reasonable control.

Incoterms means the International Commercial Terms published by the International Chamber of Commerce, 2010 edition or any successor thereto.

Intellectual Property Rights means patents, rights to inventions, copyright, trademarks, rights in confidential information, domain names, goodwill, database rights and all other registered or unregistered intellectual property rights and similar or equivalent rights which subsist or will subsist now or in future in any part of the world.

Order means an order by the Buyer for the Goods, as set out in the Buyer's order form or acceptance of the Quotation.

Quotation means any formal quotation which is issued by the Seller and which the Buyer seeks to accept via its Order.

Specification means any specification for the Goods which is provided by the Seller in Writing or approved by the Seller in Writing; and

Writing includes telex, cable, e-mail, facsimile transmission, and comparable means of communication.

1.1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted, or extended at the relevant time.

1.1.3 The headings in these conditions are for convenience only and shall not affect their interpretation.

1.1.4 A person includes a natural person, corporate or unincorporated body.

- 1.1.5 A reference to the "parties" is to the Buyer and the Seller and to a "party" is to either of them.
- 1.1.6 A phrase preceded by the words "including", "include", "in particular" or any similar words or expressions shall be construed as illustrative and shall not limit the sense of the preceding words.
- 1.1.7 "Holding company" and "subsidiary" have the meanings assigned to them in the Companies Act 2006.
- 1.1.8 In relation to a company "group" means that company, any company of which it is a subsidiary (its holding company) and any other subsidiary of such holding company.
- 1.1.9 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

2. Basis of sale

- 2.1 The Order constitutes an offer by the Buyer to purchase Goods in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Seller accepts the Order in Writing, at which point the Contract will come into existence.
- 2.3 Once the Contract has come into existence in accordance with these Conditions, the Buyer cannot cancel or amend the Order except with the agreement in Writing of the Seller. Any such agreement shall be subject to the Buyer indemnifying the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller because of cancellation or amendment.
- 2.4 The Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, practice or a course of dealing.

2.5 The Contract shall constitute the entire agreement between the parties to the exclusion of any other terms and conditions or any other agreement, arrangement or understanding which is made or purported to be made between the Seller and the Buyer whether written or oral, relating to its subject matter.

2.6 The Buyer acknowledges that it has not relied on and shall have no rights or remedies in relation to, any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract. The Buyer's only rights and

remedies in relation to any representation or warranty set out in the Contract are limited to damages for breach of contract.

2.7 Any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller is provided solely to give an approximate idea of the Goods and shall not form part of the Contract. Any typographical, clerical or other error or omission in any such document is subject to correction without any liability on the part of the Seller.

2.8 A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise a quotation at any time prior to the Seller's acceptance of the Buyer's Order.

3. Orders and specifications

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable Specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.2 Subject to clause 3.6, the quantity, quality, and description of and any specification for the Goods shall be those set out in the Order.

3.3 The Buyer acknowledges that Goods are supplied on an 'as is' basis and, unless different arrangements have been in writing, have not been prepared to meet the Buyer's individual requirements. It is the Buyer's responsibility to ensure the Goods meet the Buyer's requirements and are fit for the Buyer's purpose.

3.4 If the Goods are to be manufactured, designed, built or configured or any process is to be applied to the Goods by the Seller in accordance with a Specification submitted by the Buyer, the Buyer shall hold the Seller harmless and shall fully and promptly indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any Intellectual Property Rights which results from the Seller's use of the Specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which:

3.5.1 are required to conform to any applicable statutory requirements; or

3.5.2 which do not materially affect their quality or performance.

3.6 The Buyer shall not be entitled to reject the Goods if the Seller delivers up to and including 10% more or less than the quantity of the Goods ordered (whether in terms of the weight of the Goods or otherwise) and the Buyer shall pay for the Goods delivered at the rate provided in the Contract.

3.7 If the Seller delivers more than 10% more or less than the Goods ordered the Buyer may accept the Order and pay for any excess at the rate set out in the Contract or reject any excess Goods, provided that any rejected Goods are returned to the Seller in the same condition as on delivery to the Buyer no later than 14 days from the date of delivery.

4. Price of the goods

4.1 The price of the Goods shall be the price set out in the Quotation. The price in the Quotation shall only be valid for 7 days from the date of the Quotation, after which time it can be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to:

4.2.1 any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of

duties, significant increase in the costs of labour, materials, or other costs of manufacture);

4.2.2 any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

4.3 Any additional duties, tariffs or costs related to extra handling of goods or alternative transport, or custom requirements, as well as any material increase in purchase costs due to anti-dumping duties or tariff changes, shall be borne by the customer.

4.4 Unless otherwise agreed in Writing between the parties, all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's additional charges for transport, packaging, and insurance.

4.5 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.6 The cost of returnable pallets and containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

5. Terms of payment

5.1 Subject to any special terms between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after completion of delivery of the Goods in accordance with these Conditions.

5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled) within 30 days after the end of the month in which the Goods are delivered, and the Seller shall be entitled to recover the price, notwithstanding that the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 cancel the contract and/or suspend any further deliveries to the Buyer.

5.3.2 require immediate payment of all sums payable by the Buyer to the Seller, whether under or in connection with the Contract or otherwise and whether or not they have fallen due, notwithstanding any credit terms that have been previously agreed between the Buyer and the Seller.

5.3.3 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.4 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 5 per cent per annum above the Bank of England's base lending rate from time to time calculated on a daily basis, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

5.4 In the event that the Seller owes money to the Buyer under any contract or other arrangement entered into between the Seller and the Buyer the Seller shall be entitled to set off such sums owed by the Seller to the Buyer against any sums which the Buyer shall owe to the Seller whether under the Contract or otherwise.

5.5 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law.

6. Delivery

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods from the Delivery Location or, if the Delivery Location is not Seller's premises, by the Seller delivering the Goods to the Delivery Location.

- 6.2 If the Delivery Location is the Seller's premises, the Buyer shall collect the Goods from the Delivery Location on the date agreed in Writing or, where no date has been agreed, within 3 working days of the Seller notifying the Buyer that the Goods are ready for collection.
- 6.3 If the Delivery Location is a place other than the Seller's premises, the Seller shall deliver the Goods to the Delivery Location on the date agreed in Writing (subject to clause 6.4) or, where none is agreed, at any time after the Seller notifies the Buyer that the Goods are ready.
- 6.4 Dates for delivery of the Goods by the Seller are approximate only and time for delivery shall not be of the essence of the Contract. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.5 The Seller shall have no liability for failure to deliver or delay in delivering the Goods which is caused by a Force Majeure Event or the Buyer's failure to provide adequate or accurate information or instructions. If the Seller fails to deliver the Goods or any instalment of them for any other reason, then, subject to clause 6.6, its liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.6 Only delays in delivery of the Goods by the Seller that exceed 6 months will entitle the Buyer to terminate the Contract and claim the excess cost of replacement or similar Goods in accordance with clause 6.5.
- 6.7 Delivery of the Goods shall be completed on the completion of loading of the Goods at the Delivery Location or, where the Delivery Location is not Seller's premises, upon the Goods' arrival at the Delivery Location.
- 6.8 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract governed by these Conditions. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 6.9 If the Buyer fails to collect the Goods on the date or within the period described in clause 6.2 or, if the Delivery Location is a location other than the Seller's premises, to accept delivery of them when the Seller first attempts delivery then:

6.9.1 delivery of the Goods shall be deemed to have been completed upon such date or at the end of such period or, as applicable, upon such first attempt; and

6.9.2 the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.9.3 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.10 Failure to notify the Seller of the non-delivery of the Goods, or any of them, within 7 days of the due date for delivery will release the Seller from liability for claims for non-delivery.

7. Risk and property

7.1 Subject to clause 11, risk of damage to or loss of the Goods shall pass to the Buyer upon completion of delivery in accordance with clause 6.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the earlier of:

7.2.1 the Seller receiving in cash or cleared funds, payment in full of:

7.2.1.1 the price of the Goods; and

7.2.1.2 any other debts owed by the Buyer to the Seller

7.2.2 in which case title shall pass at the time of payment of all such sums; and

7.2.3 the Buyer reselling the Goods, in which title shall pass to the Buyer in accordance with clause 7.4.

7.3 Until property in the Goods passes to the Buyer, the Buyer shall:

- 7.3.1 store the Goods separately from any goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property.
- 7.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods.
- 7.3.3 maintain the Goods in satisfactory condition, keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller and, upon the Seller's request, produce the policy of insurance to the Seller.
- 7.3.4 notify the Seller immediately if it becomes subject to any of the events listed in clauses, 10.1.2 to 10.1.8 inclusive.
- 7.3.5 give the Seller such information as it requires from time to time in relation to the Goods; and
- 7.3.6 not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 7.4 Subject to clause 7.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:
- 7.4.1 it does so as principal and not as the Seller's agent; and
- 7.4.2 title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.
- 7.5 Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time:
- 7.5.1 to terminate the Buyer's right to resell the Goods in accordance with clause 7.4 by giving written notice to the Buyer; and

7.5.2 to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, the Buyer grants the Seller, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored or otherwise located, but in any event, and without limitation, hereby undertakes to secure full rights of access at any time to any such premises for the Seller, its agents and employees to recover the Goods and to undertake any work required to remove them, notwithstanding that the Goods may be affixed or attached to any other goods or property.

8. Warranties and liability

8.1 Subject to the conditions set out below the Seller warrants that the Goods will:

8.1.1 correspond with the Specification at the time of delivery; and

8.1.2 be free from material defects in material and workmanship if agreed in writing for a period of 6 months from the date of delivery (the warranty period).

8.2 Subject to clause 8.4, if:

8.2.1 the Buyer gives the Seller written notice of a Defect within 7 days of the date of delivery or, if later, within 7 days on which the Defect became apparent or would have become apparent on inspection or testing of the Goods.

8.2.2 the Seller is given a reasonable opportunity of examining the Goods.

8.2.3 the Buyer returns the Goods to the Seller, if asked to do so by the Buyer; and

8.2.4 the Seller agrees, or it is established under clause 8.3, that the Goods are Defective.

8.2.5 then the Seller will, at its option, replace or repair any Defective Goods or refund the price of those Goods in full.

8.3 If the Seller disagrees with the Buyer that there is a Defect in the Goods, the dispute shall be referred to an independent third party appointed jointly by

the Seller and the Buyer or, failing agreement within 7 days, by a party appointed, on the application of either the Seller or the Buyer, by the President for the time being of Institute of Chartered Accountants. Such independent third party shall act as an expert and not as an arbiter and his decision shall be final and binding on, and his costs and expenses shall be borne equally by, the Seller and the Buyer.

8.4 The Seller shall not be liable in respect of any Defect if:

8.4.1 the Buyer fails to follow the procedures set out in these Conditions in relation to Defects.

8.4.2 the price of the Goods has not been paid.

8.4.3 the Buyer makes any further use of such Goods after giving a notice in accordance clause 8.2.

8.4.4 the Defect arises because of installation, operation or maintenance carried out other than in accordance with any instructions supplied orally or in writing with the Goods.

8.4.5 the Defect arises because of the Seller following any drawing, design or Specification supplied by the Buyer.

8.4.6 the Buyer alters or repairs such Goods without the written consent of the Seller.

8.4.7 the Defect arises because of fair wear and tear, willful damage, negligence, or abnormal working conditions.

8.4.8 the Seller has obtained written confirmation from the Buyer that the Goods were delivered in conformity to the warranty at clause 8.1; or

8.4.9 the Defect arises because of changes made to ensure they comply with applicable statutory or regulatory standards.

8.5 The warranties set out in these Conditions do not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer

shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.6 Except as provided in this clause 8, the Seller shall have no liability to the Buyer in respect of any Defect.

8.7 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Seller under clause 8.2

9. Liability

9.1 Except as set out in these Conditions, all conditions, warranties, and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, non-supply or delay in supplying the Goods are excluded to the extent permitted by law.

9.2 Nothing in these Conditions is intended to exclude or limit the liability of the Seller to the Buyer for the following matters:

9.2.1 death or personal injury caused by the Seller's negligence.

9.2.2 failure to give good title to the Goods; or

9.2.3 fraudulent misrepresentation.

9.3 Subject to clause 9.2:

9.3.1 the Seller shall have no liability to the Buyer in contract, tort (including negligence or breach of statutory duty) or otherwise for any of the following losses or damages, whether direct or indirect, arising out of, or in connection with, the supply, non-supply, or delay in supplying the Goods or otherwise in connection with the Contract:

9.3.1.1 loss or damage incurred by the Buyer as a result of third-party claims.

9.3.1.2 loss of actual or anticipated profits.

9.3.1.3 loss of business opportunity.

9.3.1.4 loss of anticipated savings.

9.3.1.5 loss of goodwill.

9.3.1.6 injury to reputation; or

9.3.1.7 any indirect, special, or consequential loss or damage howsoever caused even if the Seller was advised of the possibility of them in advance; and

9.3.2 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 not exceed 100% of the price paid for the Goods supplied under the Contract or, where the Buyer's claim against the Seller concerns some, but not all the Goods supplied under the Contract, 100% of the price paid for those Goods with which the claim is concerned.

9.4 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any Force Majeure Event. Force Majeure Events shall be deemed to include, but not be limited to:

9.4.1 act of God, explosion, flood, tempest, fire, or accident.

9.4.2 war or threat of war, sabotage, insurrection, civil disturbance, or requisition.

9.4.3 acts, restrictions, regulations, byelaws, prohibitions, or measures of any kind on the part of any governmental, parliamentary, or local authority.

9.4.4 import or export regulations or embargoes.

9.4.5 strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery.

9.4.6 power failure or breakdown in machinery.

9.5 These Conditions do not create any right enforceable by any person not a party to it except that person who is the permitted successor to, or assignee of the Seller is deemed to have the benefit of all rights of the Seller.

10. Termination

10.1 Without prejudice to its other rights and remedies, the Seller may terminate the Contract and/or suspend any further deliveries under the Contract without any liability to the Buyer if:

10.1.1 the Buyer commits a material breach of the Contract which is irremediable or which it fails to remedy within 7 days of being notified in writing of the breach by the Buyer.

10.1.2 a winding-up order or bankruptcy order is made against the Buyer; or

10.1.3 the Buyer passes a resolution or makes a determination for it to be wound up without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party); or

10.1.4 the Buyer has appointed to it an administrator or an administrative receiver;
or

10.1.5 being a partnership, in addition to the above, the Buyer suffers bankruptcy orders being made against all its partners; or

10.1.6 an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the Buyer's assets.

10.1.7 the Buyer ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

10.1.8 any arrangement, compromise, or composition in satisfaction of its debts is proposed or entered into by the Buyer; or

- 10.1.9 any event analogous to those described in clause 10 occurs in relation to the Buyer in any jurisdiction in which that other party is incorporated, resident or carries on business.
- 10.1.10 the Buyer suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business.
- 10.1.11 the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 10.1.12 the Buyer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 10.2 On termination of the Contract for any reason:
- 10.2.1 the accrued rights and remedies of each party shall be unaffected. Clauses of these Conditions which are expressly or by implication intended to survive to termination shall continue in full force and effect.
- 10.2.2 the price of any Goods which have been delivered but not paid for shall become immediately due and payable.

11. Export terms

- 11.1 The provisions of this clause 11 shall apply in respect of any Goods supplied for export from the United Kingdom and shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 11.2 Where the Delivery Location is a location other than the Seller's premises, unless otherwise agreed in Writing between the parties (whether by reference to Incoterms or otherwise):
- 11.2.1 risk and responsibility for the Goods shall pass to the Buyer once they have been delivered to the carrier appointed to deliver the Goods to the Delivery Location (the Carrier).

- 11.2.2 the Seller shall not be responsible for insuring the Goods during transit; and
- 11.2.3 the Buyer shall insure the Goods for their full price and for the benefit of the Seller from the point at which they are delivered to the Carrier until such time as title to the Goods passes to the Buyer in accordance with these Conditions and, upon the Seller's request, produce the policy of insurance to the Seller.
- 11.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 11.4 The Buyer is responsible for complying with all UK laws. regarding UK military items exported from the UK regardless of destination.
- 11.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before collection. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection, and which is made after collection, or in respect of any damage during transit.
- 11.6 Payment of all amounts due to the Seller shall be made:
- 11.6.1 by irrevocable letter of credit which shall:
- 11.6.1.1 be in terms satisfactory to the Seller.
- 11.6.1.2 be opened by the Buyer at Buyer's expense in favour of the Seller and confirmed by a recognised European Bank acceptable to the Seller within 7 days of formation of the Contract and, in any case, no later than 3 working days before the Goods are due to be collected or dispatched from the Seller's premises.
- 11.6.1.3 be for the price of the Goods (together with any tax or duty payable on them and any delivery or packing charges).
- 11.6.2 be valid for 6 months and the Seller shall be entitled to immediate payment on presentation of the letter of credit or/if the Seller has agreed in Writing on or before acceptance of the Buyer's

Order to waive this requirement Standard Terms of Payment (5, above) shall apply.

11.7 If the Buyer fails to open and confirm a Letter of Credit or bill of exchange in accordance with clause 11.6, then without prejudice to the Seller's other rights and remedies, the Seller shall be entitled to require payment of the price of the Goods in full prior to delivery of the Goods.

11.8 The Buyer undertakes not to offer the Goods for resale in any country notified by the Seller to the Buyer at or before the time the Buyer's Order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

12. General

12.1 The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its Group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.

12.2 The Order is personal to the Buyer and the Buyer shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

12.3 No variation to these Conditions shall be binding unless agreed in Writing by the Seller.

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

12.5 The Seller can only waive a breach of the contract expressly and in writing. Failure or delay by the Seller in enforcing any provision of any Contract shall not be construed as a waiver of any of its rights under the Contract. No waiver by the Seller of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

- 12.6 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not.
- 12.7 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 12.8 Except as expressly stated in these Conditions, neither the Seller nor the Buyer intends that any term of the Contract shall be enforceable by virtue of the contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.9 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 the laws of England.
- 12.10 Subject to clause 12.11, the Seller and the Buyer submit to the exclusive jurisdiction of the English courts in relation to any dispute arising under or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).
- 12.11 The Seller shall be entitled, but not obliged, to refer any dispute arising between the parties under or in connection with the Contract to an arbitrator. Such arbitrator shall be agreed between the Seller and the Buyer or, if they fail to agree upon the appointment of an arbitrator within 14 days of the Seller's request, such arbitrator shall be nominated by the President of the Chartered Institute of Arbitrators from time to time upon the application of the Seller. Any reference to arbitration shall be conducted in accordance with the Rules of the London Court of International Arbitration and the arbitration shall be held in London, England. The arbitrator's award shall make provision for the cost of arbitration to be paid by the parties in such proportions as the arbitrator decides is appropriate. For the avoidance of doubt, the law applicable to any dispute to be determined in any such arbitration shall be the law of the Contract.