

Terms & Conditions of Sale

Terms and conditions for the supply of goods and services in business to business transactions.

The Customer's attention is particularly drawn to the provisions of clauses 8 (**Customer's Obligations**) and 13 (**Limitation of Liability**).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions (as defined below).

1.1 Definitions:

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

"Commencement Date" has the meaning given in clause 2.2;

"Conditions" these terms and conditions as amended from time to time in accordance with clause 17.9;

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

"Customer" the person or firm who purchases the Goods and/or Services from the Supplier;

"Data Controller" has the meaning set out in the General Data Protection Regulation 25.05.18;

"Data Subject" an individual who is the subject of Personal Data;

"Documents" means any literature, diagrams, drawings, advice and/or recommendations provided by the Supplier (whether or not bespoke), as set out in the Order or Goods Specification or Service Specification;

"Delivery Location" has the meaning given in clause 4.2;

"Force Majeure Event" has the meaning given to it in clause 16;

"Goods" the goods (or any part of them) set out in the Order;

"Goods Specification" any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier;

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

"Order" any instruction from the Customer to the Supplier to purchase Goods and/or Services (howsoever received and including, but not limited to, via purchase order form, automated order, email, telephone or fax);

"Personal Data" has the meaning set out in the General Data Protection Regulation 25.05.18 and relates only to personal data, or any part of such personal data, in respect of which the Supplier is the Data Controller and in relation to which the Supplier is providing services under the Contract;

"Processing and process" have the meaning set out in the General Data Protection Regulation 25.05.18;

"Services" the services, including the Documentation, supplied by the Supplier to the Customer as set out in the Service Specification or Order;

"Service Specification" the description or specification for the Services provided in writing by the Supplier to the Customer;

"Supplier" **Rayleigh Instruments Limited** registered in England and Wales with company number 808961;

"Supplier Materials" has the meaning given in clause 8.1.9.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a party includes its personal representatives, successors and permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6 A reference to **writing** or **written** includes fax and email.

2. Basis of Contract

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 Subject to clause 2.3, the Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (**Acknowledgment of Order**) at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 All Orders are accepted subject to the availability of the Goods and/or the Supplier receiving any necessary licence to purchase and/or sell the Goods (or any part thereof). The Supplier reserves the right to terminate the Contract under clause 14.2.2 if the Goods are not available or it does not receive any such licence.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 calendar days from its date of issue, unless otherwise specified in writing by the Supplier.

2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

3.1 The Goods are described in the Supplier's catalogue or website (<https://www.rayleigh.com>) as modified by any applicable Goods Specification.

3.2 The Customer shall indemnify the Supplier 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 costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement the Supplier is subject to, and the Supplier shall notify the Customer in any such event.
- 4. Delivery of Goods**
- 4.1 The Supplier shall ensure that:
- 4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the contract number and all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.1.2 it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 As agreed in advance and in writing between the parties, either:
- 4.2.1 the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready; or
- 4.2.2 the Customer shall collect the Goods from the Supplier's premises or such other location as may be agreed with the Customer before delivery ("**Delivery Location**") within 3 Business Days of the Supplier notifying the Customer that the Goods are ready.
- 4.3 If the Goods are:
- 4.3.1 delivered, delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location; or
- 4.3.2 collected, delivery shall be completed on the completion of the loading of the Goods at the Delivery Location.
- Each Good shall be deemed delivered when it is unloaded (in the case of delivery) from the transportation vehicle or loaded (in the case of collection) onto the transportation vehicle.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods including any delay that is caused by a Force Majeure Event or the Customer's delay or failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods (including in relation to the Goods Specification and/or Service Specification).
- 4.5 The Customer will notify the Supplier as soon as practicable in the event of partial delivery or total non-delivery, and in any event, within 3 Business Days of the date of the invoice.
- 4.6 The Supplier shall have no liability for any failure to deliver the Goods including to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods (including in relation to the Goods Specification and/or Service Specification).
- 4.7 If the Customer fails to take or accept delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the 3rd Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- 4.7.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.8 All costs and expenses incurred by the Supplier under clause 4.7.2 shall be payable by the Customer in accordance with clause 9.5.
- 4.9 If 10 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and after deducting reasonable storage and selling costs, account to the Customer for any excess over the price paid by the Customer for the Goods or charge the Customer for any shortfall below the price for the Goods.
- 4.10 If agreed between the parties in writing, the Supplier may deliver the Goods by instalments. Each instalment shall be invoiced and paid for separately and shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.11 Where the Customer believes the Goods have been damaged in transit the Customer must notify the Supplier as soon as possible and in any event within 3 Business Days of delivery.
- 5. Quality of Goods**
- 5.1 Unless otherwise stated in writing by the Supplier on the quotation, the Supplier warrants that on delivery, and for a period of 12 months from the date of delivery ("**warranty period**"), the Goods shall be free from manufacturing defects.
- 5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Goods if:
- 5.2.1 the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- 5.2.2 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost clearly identified with a returns number ("**RMA number**") obtained from the Supplier, which the Supplier shall give to the Customer on request; and
- 5.2.3 the Supplier is given a reasonable opportunity of examining such Goods.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if the defect arises:
- 5.3.1 because the Goods were used with faulty, incorrect and/or substandard goods;
- 5.3.2 as a result of the Supplier following any drawing, design or Goods Specification (or any information thereon) supplied by the Customer or a third party on the Customer's behalf;
- 5.3.3 as a result of fair wear and tear, wilful damage, negligence, abnormal working conditions or defective installation; or
- 5.3.4 because the Customer or a third party on the Customer's behalf:
- 5.3.4.1 incorrectly calculated the quantity of Goods required;
- 5.3.4.2 makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- 5.3.4.3 failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 5.3.4.4 alters or repairs such Goods without the written consent of the Supplier.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.6 If the Goods are not defective, the Customer shall only be entitled to return the Goods after delivery if:
- 5.6.1 the Goods are stock items and are not bespoke (in whole or in part);
- 5.6.2 the Customer obtains the Supplier's prior written consent and an RMA number for returning such Goods before the Goods are returned; and
- 5.6.3 the Goods have not been used, are not damaged and are in their original state and packaging.
- 5.7 Any Goods returned under clause 5.6 shall be:
- 5.7.1 returned at the Customer's risk and cost;
- 5.7.2 subject to the payment by the Customer of a restocking fee, up to a maximum of 25% of the total amount charged by the Supplier for such Goods.

6. Title and Risk

- 6.1 The risk in the Goods shall pass to the Customer on delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 6.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- 6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 (until the Goods are used by the Customer and incorporated into another product or installed) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.2 (until the Goods are used by the Customer and incorporated into another product or installed) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1.1 to clause 14.1.3; and
- 6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 6.4.1 it does so as principal and not as the Supplier's agent; and
- 6.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If, before title to the Goods passes to the Customer:
- 6.5.1 the Customer becomes subject to any of the events listed in clause 14.1.1 to clause 14.1.3; or
- 6.5.2 the Customer fails to pay any amount due on the due date for payment, then, without limiting any other right or remedy the Supplier may have:
- 6.5.3 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- 6.5.4 the Supplier may at any time:
- 6.5.4.1 require the Customer to deliver up all relevant Goods in its possession which have not been resold, or irrevocably incorporated into another product or installed; and
- 6.5.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6.6 When reselling the Goods the Customer shall not:
- 6.6.1 represent itself as an agent of the Supplier for any purpose; or
- 6.6.2 pledge the Supplier's credit; or
- 6.6.3 give any condition or warranty on the Supplier's behalf; or
- 6.6.4 make any representation on the Supplier's behalf; or
- 6.6.5 commit the Supplier to any contracts; or
- 6.6.6 otherwise incur any liability for or on behalf of the Supplier.
- 6.7 The Customer agrees to indemnify and keep the Supplier indemnified against all costs, claims, damages or expenses incurred by the Supplier due to any failure by the Customer to comply with any of its obligations under clause 6.6.

7. Supply of Services

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Acknowledgement of Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement the Supplier is subject to or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. Customer's Obligations

- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and any Goods Specification are complete and accurate;
- 8.1.2 be responsible for:
- 8.1.2.1 promptly providing the Goods Specification and/or Service Specification;
- 8.1.2.2 promptly responding to any queries the Supplier has in regards to the Goods Specification and/or Service Specification;
- 8.1.2.3 checking and/or ensuring the Goods are suitable for the Customer's intended purpose, including with regard to type, function and quantity (for the avoidance of doubt, the Supplier is not providing any warranty in relation to fitness for purpose);
- 8.1.2.4 identifying, checking and/or ensuring the Customer has all the relevant pieces of equipment needed for the Goods to operate correctly;
- 8.1.2.5 installation of the Goods;
- 8.1.2.6 all schematics involving the Goods; and
- 8.1.2.7 checking and/or ensuring specialist advice is taken before relying on any Documentation provided by the Supplier relating to the Goods and/or Services and any third party goods and/or services required by the Customer.
- 8.1.3 co-operate with the Supplier in all matters relating to the Services;
- 8.1.4 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Supplier to provide the Services;
- 8.1.5 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 8.1.6 prepare the Customer's premises for the supply of the Services;
- 8.1.7 obtain and maintain all necessary licences, approvals, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 8.1.8 comply with all applicable laws, including health and safety laws;
- 8.1.9 keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- 8.1.10 comply with any additional obligations as set out in the Service Specification and any Goods Specification.
- 8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 8.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend

performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer Default; and

8.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. Charges and Payment

9.1 The price for Goods:

9.1.1 shall, unless specified otherwise in writing by the Supplier, be the price set out on the quotation (provided it is less than 30 calendar days old) or, if no price is quoted (or the quotation is more than 30 calendar days old), the price set out in the Supplier's published price list as at the date of delivery; and

9.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

9.2 The charges for Services shall be calculated on a time and materials basis:

9.2.1 the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in writing and provided to the Customer;

9.2.2 the Supplier's daily fee rates for each individual person are calculated on the basis of an 7.5 hour day, usually from 9.00 am to 5:30pm worked on Business Days;

9.2.3 the Supplier shall be entitled to charge an overtime rate which shall be agreed with the Customer before supply of the Services starts, for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2.2; and

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

9.3 The Supplier reserves the right to:

9.3.1 increase the price of the Goods and/or Services, by giving notice to the Customer at any time before delivery or before supply of the Services starts or during supply of the Services, to reflect any increase in the cost of the Goods and/or Services to the Supplier that is due to:

9.3.1.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

9.3.1.2 any request by the Customer to change the delivery date(s), quantities or types of Goods and/or Services ordered, or the Goods Specification and/or Service Specification; or

9.3.1.3 any delay caused by any instructions of the Customer in respect of the Goods and/or Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods and/or Services.

9.4 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on or at any time after completion of the Services.

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

9.5.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and

9.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence under the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 14 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Intellectual Property Rights

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

10.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence during the term of the Contract to copy and modify the Documents (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Documents in its business, provided the Customer modifies the Documents at its own risk.

10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.

10.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Goods and/or Services to the Customer.

11. Data protection and data processing

11.1 The Customer and the Supplier acknowledge that for the purposes of the General Data Protection Regulation 25.05.18, the Supplier is the Data Controller as well as the data processor in respect of any Personal Data.

11.2 The Supplier shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer.

11.3 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.

11.4 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

11.5 The Supplier warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:

11.5.1 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 a level of security appropriate to:

11.5.1.1 the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

11.5.1.2 the nature of the data to be protected; and

11.5.2 take reasonable steps to ensure compliance with those measures.

11.6 Each party (the "Defaulting Party") agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the Defaulting Party or its employees or agents to comply with any of its obligations under this clause 11.

- 11.7 The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Customer's instructions.
- 11.8 The Supplier may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:
- 11.8.1 is on terms which are substantially the same as those set out in this Contract; and
- 11.8.2 terminates automatically on termination of this Contract for any reason.

12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time **OR** at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, technical data, know-how, trade secrets, clients or suppliers of the other party, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- 12.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
- 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

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

- 13.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 13.1.2 fraud or fraudulent misrepresentation;
- 13.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 13.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 13.1.5 defective products under the Consumer Protection Act 1987.
- 13.2 Subject to clause 13.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 13.2.1 loss of profits;
- 13.2.2 loss of sales or business;
- 13.2.3 loss of agreements or contracts;
- 13.2.4 loss of anticipated savings;
- 13.2.5 loss of use or corruption of software, data or information;
- 13.2.6 loss of or damage to goodwill; and
- 13.2.7 any indirect or consequential loss.
- 13.3 Subject to clause 13.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to an amount equal to 100% of the total charges paid to the Supplier under the Contract.
- 13.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

- 13.5 This clause 13 shall survive termination of the Contract.

14. Termination

- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 14.1.1 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 14.1.2 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 14.1.3 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 14.2.1 the time for performance of the Supplier's obligations shall be extended, due to a Force Majeure Event in accordance with clause 16.2, for a period in excess of four weeks;
- 14.2.2 the Supplier does not have the Goods available to fulfil the Customer's Order or it does not receive any necessary licence to purchase and/or sell the Goods (or any part thereof);
- 14.2.3 the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- 14.2.4 the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 14.2.5 there is a change of control of the Customer.
- 14.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:
- 14.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 14.3.2 the Customer becomes subject to any of the events listed in clause 14.1.1 to clause 14.1.3; or
- 14.3.3 the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 14.1.1 to clause 14.1.3.

15. Consequences of Termination

- 15.1 On termination of the Contract:
- 15.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 15.1.2 the Customer shall return all of the Supplier Materials and any Documents or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and
- 15.1.3 any outstanding Order shall be deemed to have been terminated.
- 15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.
- 16. Force Majeure**
- 16.1 The Supplier shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control ("**Force Majeure Event**") including where the Supplier is required to supply the government and/or any governmental body with goods or services urgently or with priority, which results in the Supplier delaying or failing to perform any of its obligations to the Customer under the Contract.
- 16.2 If a Force Majeure Event occurs the time for performance of the Supplier's obligations shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.
- 17. General**
- 17.1 Conflict
- 17.1.1 If there is a conflict between the quotation and these Conditions, except where clause 5.1 applies, the Conditions will prevail over the quotation.
- 17.2 Assignment and other dealings
- 17.2.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 17.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 17.3 Notices.
- 17.3.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number, or sent by email to the relevant party's email address as advised to the sending party by the receiving party, or such usual email address as in use by the receiving party prior to the service of the relevant notice.
- 17.3.2 Any notice shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission (provided no failure notification or the like is received).
- 17.3.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 17.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.5 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 17.7 Entire agreement.
- 17.7.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 17.7.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- 17.7.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 17.8 **Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 17.9 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 17.10 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 17.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.