

AESSEAL plc
STANDARD CONDITIONS OF SALE

Document: TC2011HY
Issue: 1
Date : 01 November 2011

- 1 INTERPRETATION**
1.1 **BUYER** means the person who accepts a quotation of the Seller for the sale of the Goods and/or performance of the Service or whose order for the Goods and/or Service is accepted by the Seller.
CONDITIONS means the standard Terms and Conditions of Sale set out in this document and (unless the context otherwise requires) includes any special Terms and Conditions agreed in writing between the Buyer and the Seller.
CONTRACT means the contract for the purchase and sale of the Goods and/or performance of the Service consisting of a signed front sheet, contractual documentation as disclosed in Condition 2.1, the Conditions and any schedules.
DESIGNS means any designs, drawings, plans, data or other information relating to the Goods.
GOODS means the Goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions including Goods supplied as part of the Service.
INCOTERMS means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made.
INTELLECTUAL PROPERTY means all inventions, patents, utility models, designs (both registered or unregistered and including rights relating to semi-conductor topographies), database rights, copyright and trade marks (both registered and unregistered), together with all rights to the grant of and applications for the same and including all similar or analogous rights and all other rights in the nature of intellectual and industrial property throughout the world and all future rights of such nature.
LOSS means any costs, claims, proceedings, demands, damages, compensation, awards, expenses (including professional) or other loss (including special, consequential, loss of profit and other economic loss) whatsoever; means AESSEAL PLC (registered in England and Wales under number 2101607).
SELLER
SERVICE means the Service(s) (including any parts of the Service) which the Seller is to supply in accordance with these Conditions.
WRITING includes faxes and any non-transitory form of visible reproduction of words [and email] but not [email or] text messaging via mobile phone.
- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
1.4 In these Conditions words importing the singular only shall include the plural and vice versa.
- 2 BASIS OF THE CONTRACT**
2.1 The Buyer's purchase order, or the Buyer's acceptance of a quotation for Goods and/or Services by the Seller, constitutes an offer by the Buyer to purchase the Goods or Services specified in it on the Conditions. No offer placed by the Buyer shall be accepted by the Seller other than:
2.1.1 by a written confirmation or acceptance issued and executed by the Seller's authorised representative; or
2.1.2 (if earlier) by the Seller providing the Goods and/or Services, when the Contract will be established. The Conditions will apply to and be incorporated into the Contract and shall prevail over any terms or conditions contained, or referred to, in the Buyer's purchase order, confirmation of order, acceptance of a quotation or specification, or any inconsistent terms or conditions implied by law, trade custom, practice or course of dealing.
2.2 Quotations are given by the Seller on the basis that no contract shall come into existence except in accordance with Condition 2.1. Any quotation is valid for a period of [30] days from its date, provided that the Seller has not previously withdrawn it.
2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction both before or after the Contract is made without any liability on the part of the Seller.
2.4 Notwithstanding Condition 2.1, where the Goods consist (in whole or part) of products manufactured by third parties, then the Contract shall consist of these Conditions together with the terms and conditions of the relevant third party manufacturer so far as they relate to the use of the products.

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 and/or Service within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
3.3 The description of and any specification for the Service shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
3.4 Where:
3.4.1 the Goods are to be manufactured by the Seller; or
3.4.2 any process is to be applied to the Goods by the Seller; or
3.4.3 the Service is to be provided by the Seller; in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all Loss which may be suffered 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 the Intellectual Property rights of any other person which results from the Seller's use of the Buyer's specification.
3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other regulatory requirements or which do not materially affect their quality or performance.
3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all Losses (including the cost of all labour and materials used) incurred by the Seller as a result of cancellation.

4 SELLER'S DESIGNS

Any Designs supplied by the Seller to the Buyer, or specifically produced by the Seller for the Buyer in connection with the Contract together with the Intellectual Property in the Designs shall be the exclusive property of the Seller. The Buyer shall not disclose to any third party or use any such Designs except to the extent that it is, or becomes, public knowledge through no fault of the Seller, or as required for the purposes of the Contract.

5 PRICE OF THE GOODS AND/OR SERVICES

- 5.1 The price of the Goods and/or Services shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list (if applicable) current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
5.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (including without limitation, any foreign exchange fluctuation, currency regulation, increase or imposition of taxes and duties, significant increase in the costs of labour, materials or other costs of manufacture) or due to any change in delivery dates, quantities or specifications for the Goods and/or Services which are requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
5.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex-works basis. Where the Seller agrees to deliver the Goods or provide the Services otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance (as may be appropriate).
5.4 The price is exclusive of any applicable value added or any other sales tax, or duty or import or export duty, or brokers fees or clearance fees which may be chargeable (whether or not required to be paid to enable the Goods to be shipped from one country to another) and for which the Buyer shall be additionally responsible for paying. Failure to pay any such taxes, duties or fees shall not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account.

6 TERMS OF PAYMENT

- 6.1 Subject to Condition 6.2, and any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer:
6.1.1 for the price of the Goods on or at any time after delivery of the Goods; and/or
6.1.2 for the price of the Services on or at any time after performance of the Services.
6.2 Where:
6.2.1 the Goods are to be collected by the Buyer; or
6.2.2 the Buyer wrongfully fails to take delivery of the Goods; or
6.2.3 the Seller is unable to provide the Service or any part of it by reason of the default of the Buyer, the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for

- collection or (as the case may be) the Seller has tendered delivery of the Goods or been unable, due to the Buyer's default, to provide the Service or any part of it.
6.3 The Buyer shall pay the price of the Goods and/or Service in full and without any deduction or set-off within 30 days of the date of the Seller's invoice, notwithstanding that delivery of the Goods or performance of the Service may not have taken place or that 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.
6.4 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:
6.4.1 cancel the Contract or suspend any further deliveries of the Goods or performance of Services to the Buyer under the Contract;
6.4.2 appropriate any payment made by the Buyer to such of the Goods and/or part of the Service (or the Goods and/or Services 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;
6.4.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3 per cent over the base lending rate of HSBC Bank plc for the time being, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
6.5 The Seller reserves the right where any doubts arise as to the Buyer's financial position or in the case of failure to pay for any Goods and/or Service or any delivery or instalment as aforesaid to:
6.5.1 (in relation to the Goods) suspend delivery of any order or any part or instalment; and/or
6.5.2 (in relation to the Service) suspend performance of the Service or any part of the Service; without liability until payment or satisfactory security for payment has been provided.

7 DELIVERY OF THE GOODS AND/OR PERFORMANCE OF THE SERVICE

- 7.1 Unless agreed otherwise between the parties, where the Service consists (in whole or part) of product repairs, it shall be the sole responsibility of the Buyer to arrange (at its own cost) for that product to be conveyed to the Seller's premises.
7.2 Unless agreed otherwise between the parties, delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place. Performance of the Service shall be made by the Seller completing the Service.
7.3 Any dates quoted for delivery of the Goods and/or performance of the Service are approximate only and the Seller shall not be liable for any delay howsoever caused. Time for delivery and/or performance shall not be of the essence unless previously agreed by the Seller in writing. Where delivery and/or performance is agreed to be made within a certain period, that period shall only be deemed to commence once the Seller is in receipt of all the information and Designs requested by the Seller from the Buyer. The Goods may be delivered and/or the Service performed by the Seller in advance of the quoted delivery and/or performance date upon giving reasonable notice to the Buyer.
7.4 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the weight ordered or up to 10 per cent more or 10 per cent less than the length ordered, as the case may be, without any adjustment in the price, and the weight or length so delivered shall be deemed to be the weight or length ordered.
7.5 Where the Goods are to be delivered and/or the Service performed in instalments, each delivery or instalment shall constitute a separate contract and failure by the Seller to deliver and/or perform any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
7.6 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's 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.
7.7 If the Buyer refuses or fails to take delivery of the Goods or of any instalment thereof or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
7.7.1 store the Goods until actual delivery (at the risk of the Buyer) and charge the Buyer for the reasonable costs (including insurance) of storage; or
7.7.2 terminate the Contract with immediate effect, 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.

- 7.8 The Buyer agrees to act in a timely manner and to provide properly competent and qualified personnel with respect to its obligations under the Contract and to any tasks to be undertaken by it, whether expressly set out in the Contract or otherwise reasonably requested of it by the Seller. The Services are provided on the assumption that the Buyer and its agents will fulfil their obligations and tasks on time and as stated.
- 7.9 If, as a result of any act or omission by the Buyer or its agents (howsoever caused) which is not directly and wholly caused by the Seller (including the provision of any incorrect or inadequate information or data by the Buyer), the Seller is prevented or delayed from performing any of its obligations under the Contract or the cost of such performance increases, then:
- 7.9.1 the time for performance of the Seller's obligations will be extended for a reasonable period;
- 7.9.2 the Buyer shall pay the Seller at the Seller's standard time and materials rates for any additional time spent and materials used by it with respect to any delays or extra work caused by such act or omission of the Buyer; and
- 7.9.3 the Seller may recover all other reasonable loss from the Buyer which it sustains as a direct result of such act or omission.
- 7.10 If, after the Buyer has taken delivery of the Goods, the Seller agrees to the Goods being returned to the Seller then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 7.10.1 invoice the Buyer for the cost of storing, transporting, packaging or re-packaging and insuring the Goods and any taxes, duties or legal fees incurred by the Seller in relation thereto and the Buyer shall indemnify the Seller against all Losses of whatever nature suffered by the Seller in connection with or as a result of transporting the Goods to the Seller; and
- 7.10.2 claim from the Buyer a sum equal to 15% of the price of the returned Goods, as and for liquidated damages in respect of the Seller's lost sale, lost management time and other resulting losses and not as a penalty which sum shall be recovered from the Buyer by the Seller as follows:
- a) in the event that the Buyer has paid for the returned Goods the Buyer shall be entitled to a rebate of 85% of the price, the remainder being retained by the Seller as liquidated damages in accordance with this Condition; or
- b) in the event that the Buyer has not paid for the returned Goods the Buyer shall pay to the Seller the sum referred to in this Condition within 30 days of despatch by the Buyer or collection by the Seller, whichever is the sooner, of the returned Goods.
- 7.11 If and to the extent that the actual restocking fee payable by the Seller to its supplier following the return of any Goods by the Buyer exceeds the percentage applied to the price of the returned Goods representing liquidated damages in accordance with Condition 7.10.2 above then such percentage shall be increased to reflect the actual liquidated damages payable by the Seller to its supplier and the rebate payable by the Seller to the Buyer pursuant to Condition 7.10 (a) shall be reduced accordingly
- 7.12 For the avoidance of doubt, installation of the Goods shall be the sole responsibility of the Buyer.
- 8 RISK AND TITLE TO PROPERTY**
- 8.1 Unless otherwise agreed in these Conditions or in Incoterms which the parties have agreed shall apply to the Supply of Goods risk of damage to or loss of the Goods shall pass to the Buyer:
- 8.1.1 in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 8.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of despatch by the Seller of the Goods.
- 8.1.3 in the case of Goods to be provided as part of the Service, at the time the Service is completed.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and/or Service and all other Goods agreed to be sold or Service agreed to be performed by the Seller to the Buyer for which payment is then due. The Seller may apply any payment in satisfaction of any Contract outstanding at the date of payment notwithstanding that payment is expressed to be made in respect of a particular Contract.
- 8.3 Until such time as title in the Goods passes to the Buyer, the Buyer shall once it has possession of the Goods:
- 8.3.1 hold the Goods as the Seller's fiduciary agent and bailee;
- 8.3.2 keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and separately identifiable as the Seller's property; and
- 8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods.
- 8.4 Until title to the Goods has passed to the Buyer, the Buyer shall be entitled to use the Goods in the ordinary course of its business or to sell the Goods to third parties in the normal course of its business on behalf of and for the account of the Seller (but so that the Buyer shall not be deemed as against any such third party to be the agent of the Seller) and shall account to the Seller for the proceeds of sale or otherwise of the
- Goods whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 8.5 Until title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so immediately, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods and the Buyer hereby assigns to the Seller all rights and claims that the Buyer has against any such third party.
- 8.6 The Buyer shall 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 monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 9 WARRANTIES AND LIABILITY**
- 9.1 The Seller warrants (subject to the other provisions of the Conditions) that:-
- 9.1.1 the Goods shall for a period of six months from the earlier of the date of their initial use or the date of their delivery or in the case of mechanical seal repairs three months from the date of their initial use or three months from the date of their delivery to the Buyer be free from material defects and comply in all material respects with the description and any specification applicable to the Goods; and
- 9.1.2 the Services shall be performed using reasonable care and skill provided that time of performance shall not be of the essence.
- 9.2 The sole obligation of the Seller under the Warranty in Condition 9.1.1 shall be to repair or replace (or have its authorized distributor repair or replace) any defective Goods within ninety business days of the receipt of a complaint communicated in writing by the Buyer to the Seller.
- 9.3 The sole obligation of the Seller under the Warranty in Condition 9.1.2 shall be to re-perform the Services (or have its authorised distributor re-perform the Services) within forty five business days of the receipt of a complaint communicated in writing by the Buyer to the Seller.
- 9.4 The warranty in Condition 9.1 is given by the Seller subject to the following conditions:
- 9.4.1 the Seller shall be under no liability in respect of any defect in the Goods and/or Service arising from any drawing, design or specification supplied by the Buyer;
- 9.4.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing) in particular, but not limited to, the incorrect handling or application of the Goods, misuse or alteration or repair of the Goods without the Seller's approval;
- 9.4.3 the Seller shall be under no liability under the warranty in Condition 9.1.1 (or any other warranty, condition or guarantee) if the total price for the Goods and/or Service has not been paid by the due date for payment; and
- 9.4.4 it does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Seller so far as it is able, shall give the Buyer the benefit of any express warranty or guarantee as is given by the manufacturer to the Seller.
- 9.5 Further the Seller shall provide a free assessment Service as part of its quality assurance programme for all mechanical seals manufactured by the Seller which are found to be defective within six months of the date of initial use or delivery, whichever is the first to expire provided that the Buyer follows the Seller's instructions for the proper fitment of the correct seal or sealing system for the application as recommended in writing by the Seller and that the equipment to which the seal or sealing system is attached has been maintained in good condition and also provided that the normal life expectancy of the seal is not less than six months.
- 9.6 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods and/or Service or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods and/or Service had been delivered in accordance with the Contract.
- 9.7 Where any valid claim in respect of any of the Goods and/or Service which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to repair or replace the Goods (or the part in question) free of charge, but the Seller shall have no further liability to the Buyer and title to the Goods so replaced shall revert to the Seller.
- 10 DISCLAIMER AND LIMITATION OF LIABILITY**
- 10.1 Nothing in the Contract shall limit the liability of the Seller to the Buyer for death or personal injury resulting from its negligence (as defined in the Unfair Contract Terms Act 1977), for fraudulent misrepresentation, for breach of the Seller's obligations arising from Section 12 of the Sale of Goods Act 1979 or for any liability which cannot be excluded by law.
- 10.2 Subject to Condition 10.1 and the limitations in Condition 9, the following provisions set out the limitations on the liability of Seller (including any liability for the acts and omissions of its respective employees, agents and sub-contractors) to the Buyer with respect to:
- 10.2.1 any breach of its contractual obligations arising under the Contract;
- 10.2.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 10.2.3 any representation, statement, act or omission given, made or carried out under or in connection with the Contract (whether such liability arises in contract, tort, negligence, misrepresentation, breach of statutory duty or otherwise howsoever).
- 10.3 It is the Buyer's responsibility to ensure that the Goods and/or Services are suitable for its needs. In particular, the Seller expressly disclaims all warranties that use of the Goods or any part thereof or of the Services will result in any economic advantage, increase in profits or reduction in costs.
- 10.4 Except as expressly set forth in the Contract, all conditions, warranties and representations expressed or implied by statute, common law or otherwise with respect to the Goods and/or the Services are excluded to the fullest extent permitted by law and in no event shall the Seller be liable for any negligence or other tortious loss or for any of the following losses or damage (whether such losses or damage were foreseeable, known or otherwise and whether or not the Seller is advised of the possibility of loss, liability, damage or expense):
- 10.4.1 loss of revenue;
- 10.4.2 loss of actual or anticipated profits (including for loss of profits on contracts);
- 10.4.3 loss of the use of money;
- 10.4.4 loss of anticipated savings;
- 10.4.5 loss of business;
- 10.4.6 loss of operating time or loss of use;
- 10.4.7 loss of opportunity;
- 10.4.8 loss of goodwill;
- 10.4.9 loss of reputation;
- 10.4.10 loss of, damage to or corruption of data; or
- 10.4.11 any indirect or consequential loss or damage howsoever caused (including, for the avoidance of doubt, where such loss or damage is of the type specified in Conditions 10.4.1 - 10.4.10). Direct financial and other loss not excluded by this Condition is accepted by the Seller up to the limits set out in Condition 10.5.
- 10.5 Except as stated in Condition 10.1, the aggregate liability of the Seller to the Buyer (including liability for recovery of sums paid by the Buyer and for all damages, costs and expenses) with respect to all claims under or in connection with the Contract shall be limited to the price of the Goods and/or Services which gave rise to the liability.
- 10.6 Unless waived in writing by the Seller, no claim, regardless of form, arising out of or pertaining to the Contract may be brought by the Buyer unless the Buyer has provided to the Seller written notice of the claim within ninety days of the date on which the Buyer first became aware or could reasonably have been expected to become aware of the cause of action.
- 10.7 The parties hereby expressly acknowledge and agree that having taken independent legal advice, the limitations upon the liability of the Seller in this Condition 10 are in all respects fair and reasonable, reflect a duly considered allocation of risk between the parties and are reflected in the price paid for the Goods and/or Services under the Contract.
- 10.8 The Seller's prices are determined on the basis of the limits of liability set out in this Condition. The Buyer may by written notice to the Seller request the Seller to agree a higher limit of liability. Provided insurance cover for the higher limit can be obtained, the Seller shall use reasonable endeavours to effect insurance up to such limit and the Buyer shall pay upon demand the amount of all premiums. The Buyer shall disclose such information as the insurers shall require. In no case shall the Buyer be entitled to recover from the Seller more than the amount received from the insurers.
- 10.9 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 and/or Services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 10.9.1 act of God, explosion, flood, tempest, fire or accident;
- 10.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 10.9.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 10.9.4 import or export regulations or embargoes;
- 10.9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 10.9.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 10.9.7 power failure or breakdown in machinery.

11 INTELLECTUAL PROPERTY AND INDEMNITY

- 11.1 The Buyer shall have no rights in respect of any trade marks owned or used by the Seller or of the associated goodwill or in respect of any other Intellectual Property of the Seller protecting or relating to the Goods, and the Buyer hereby acknowledges that, except as expressly provided in this Contract, it shall not acquire any such rights and that all such rights and goodwill are, and shall remain, vested in the Seller.
- 11.2 The Seller gives no warranty as to the ownership of the Intellectual Property in the Goods or the Designs unless and until the Goods or the Designs have been produced by the Seller in pursuance of a specific design contract and for which full payment has been made by the Buyer to the Seller.
- 11.3 Subject to the provisions of Condition 11.2, if any claim is made against the Buyer that the Goods or the Designs infringe or that their use or resale infringes the Intellectual Property rights of any other person, the Seller shall indemnify the Buyer against all Losses suffered by or incurred by the Buyer in connection with the claim (including the cost of defending any legal proceedings), or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 11.3.1 the Buyer gives the Seller immediate notice of such claims;
- 11.3.2 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 11.3.3 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 11.3.4 the Buyer does not make any admissions of liability or, except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 11.3.5 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer might have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavour to do);
- 11.3.6 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
- 11.3.7 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such Loss for which the Seller is liable to indemnify the Buyer under this Condition.
- 11.4 The Buyer agrees upon demand to indemnify the Seller against all Losses of whatever nature suffered by the Seller to the extent that the same are caused by or related to:
- 11.4.1 designs, drawings or specifications given to the Seller by the Buyer in respect of Goods produced by the Seller for the Buyer; or
- 11.4.2 defective materials or products supplied by the Buyer to the Seller and incorporated by the Seller in Goods produced by the Seller for the Buyer; or
- 11.4.3 the improper incorporation, assembly, fitment, use, processing, storage or handling of Goods by the Buyer.

12 COVENANTS

- 12.1 The Buyer shall not during or for two (2) years after the performance or termination of the Contract, divulge to any person or persons whatsoever or otherwise make use of, and shall use its best endeavour to prevent the publication or disclosure of any trade secret or secret manufacturing process or designs or any confidential information concerning the business of the Seller.
- 12.2 The Buyer shall not for a period of two (2) years after the performance or termination of the Contract either on its own behalf or on behalf of any other person or persons canvass, solicit or approach or cause to be canvassed or solicited or approached for orders in respect of any Goods, any person or persons who at the date hereof is a supplier or customer of the Seller or is in the habit of dealing with the Seller.

13 INSOLVENCY OF BUYER

- 13.1 This Condition applies if:-
- 13.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 13.1.2 an encumbrancer takes possession, or a Receiver is appointed, of any of the property or assets of the Buyer; or
- 13.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 13.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

- 13.2 If Condition 13.1 applies then, without prejudice to any other right or remedy available to the Seller:-

- 13.2.1 the Seller shall be entitled by written notice to the Buyer to cancel the Contract or suspend any further deliveries and/or performance under the Contract without liability to the Buyer; and
- 13.2.2 if the Goods have been delivered and/or the Service performed but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14 EXPORT TERMS

- 14.1 Unless the context otherwise requires any terms 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.
- 14.2 Where the Goods are supplied for export from the United Kingdom, the provisions of Condition 14 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 14.3 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 thereon.
- 14.4 If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the Goods by the Buyer, the Buyer shall obtain it at its own expense and if required by the Seller produce evidence on demand that it has done so. Failure to obtain it shall not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account.
- 14.5 Unless otherwise agreed in writing between the Buyer and the Seller the Goods shall be delivered ex-works and the Seller shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act, 1979.
- 14.6 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. 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 shipment, or in respect of any damage during transit.
- 14.7 Payment of all amounts due to the Seller shall be made in accordance with Condition 6.3.
- 14.8 [The Buyer undertakes not to offer the Goods for resale in any country outside the territory (as defined in any distribution agreement made between the Seller and the Buyer from time to time) or as may be agreed between the Seller and the Buyer from time to time, 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.]

15 DISPUTE RESOLUTION

Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single Arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Institute of Mechanical Engineers whose decision shall be binding on both parties.

16 SUBCONTRACTING AND ASSIGNMENT

- 16.1 The Seller may sub-contract to any other person the performance any of its obligations under the Contract.
- 16.2 The Seller may assign, transfer (in whole or in part) or charge or deal in any manner with this Contract or the benefit or burden of or the rights under this Contract.
- 16.3 The Buyer may not without the prior written consent of the Seller assign, transfer (in whole or in part) or charge or deal in any manner with this Contract or the benefit or burden of or the rights under this Contract.

17 AMENDMENTS

No amendment of the Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties.

18 WAIVERS AND REMEDIES

- 18.1 Except as otherwise stated in the Contract, the rights and remedies of each party under the Contract are in addition to and not exclusive of any other rights or remedies under the Contract or the general law and may be waived only in writing and specifically.
- 18.2 Delay in exercising or non-exercise of any right under the Contract is not a waiver of that or any other right.
- 18.3 Partial exercise of any right under the Contract shall not preclude any further or other exercise of that right or any other right under the Contract.
- 18.4 Waiver of a breach of any term of the Contract shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

19 SEVERANCE

- 19.1 If any provision of the Contract is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability in that jurisdiction of any other provision of the Contract or the legality, validity or enforceability in any other jurisdiction of that or any other provision of the Contract.
- 19.2 Whilst the parties consider the provisions contained in the Contract reasonable, having taken independent legal advice, if any one or more of the provisions are adjudged alone or together to be illegal, invalid or unenforceable, the parties shall negotiate in good faith to modify any such provision(s) so that to the greatest extent possible they achieve the same effect as would have been achieved by the invalid or unenforceable provision(s).

20 ENTIRE AGREEMENT

- 20.1 The Contract constitutes the entire agreement between the parties with respect to the subject matter of the Contract and supercedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the parties relating to such subject matter.
- 20.2 Each party acknowledges to the other that it has not been induced to enter into the Contract by nor has it relied upon any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of the other party or any other person save for those contained in the Contract. Accordingly, each of the parties acknowledges and agrees that the only remedy available to it in respect of the subject matter of the Contract shall be for breach of contract under the terms of the Contract and it shall have no right of action against any other party in respect of any such representation, promise, assurance, warranty or undertaking.
- 20.3 This Condition shall not exclude any liability which either party would otherwise have to the other or any right which either of them may have to rescind the Contract in respect of any statements made fraudulently by the other prior to the execution of the Contract or any rights which either of them may have in respect of fraudulent concealment by the other.

21 RIGHTS OF THIRD PARTIES

A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

22 ANTI CORRUPTION

- 22.1 The Seller shall:
- 22.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption ("Relevant Requirements") including but not limited to the Bribery Act 2010 (the "Bribery Act");
- 22.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act if such activity, practice or conduct had been carried out in the UK;
- 22.1.3 maintain in place its own policies and procedures, including but not limited to adequate procedures under the Bribery Act ("Adequate Procedures") to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
- 22.1.4 maintain in place Adequate Procedures to ensure that all persons associated with the Seller or any persons (including any employee, agent, subcontractor or subsidiary) who perform Services for or on behalf of the Seller under the terms of this Contract shall comply with the Relevant Requirements.
- 22.1.5 require the Buyer (if not the end user) to maintain in place Adequate Procedures to ensure that all persons who perform Services for or on behalf of the Seller under the terms of this Contract shall comply with the Relevant Requirements.

23 NOTICES

- 23.1 All notices between the parties with respect to the Contract shall be in writing and signed by or on behalf of the party giving it. Any notice shall be duly served (i) on delivery if delivered by hand, (ii) 48 hours after sending if sent by first class post or recorded delivery or (iii) on sending if sent by fax (or email) (provided that a copy is also sent by post), provided that in each case the notice is sent to the address of the addressee given at the start of the Contract or such other address as the addressee may from time to time have notified for the purpose of this condition.
- 23.2 Any notice or communication given under the Contract shall not be validly served if sent by text messaging via mobile phone.

24 GOVERNING LAW

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

25 JURISDICTION

In relation to any legal action or proceedings (a) arising out of or in connection with the Contract or its implementation or effect or (b) relating to any non-contractual obligations arising out of or in connection with the Contract, each of the parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.