Avocet Battery Materials Limited

Terms and Conditions of business

Introduction

In these Conditions, the **Supplier** means Avocet Battery Materials Limited, company registration number 12860059 (trading as Avocet Battery Materials, Avocet Research Centre and any other trading name under which the Supplier operates from time to time). References in these Conditions to **we**, **us** and **our** are references to the Supplier.

These Conditions apply to all contracts for the supply of goods or services, or goods and services, by us to our customers and clients.

The Customer's attention is particularly drawn to the provisions of clause 14 (Limitation of liability)

1. Interpretation

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

1.1 Definitions:

Applicable Incoterms® Rule: has the meaning given in clause 3.2.

Approved Credit Account: means an arrangement with the Supplier, granted or confirmed to the Customer in writing, whereby the Supplier has agreed that the Customer may pay for Goods and/or Services on credit terms.

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

Conditions: these terms and conditions as amended from time to time in accordance with clause 19.8.

Contract: the contract between the Supplier and the Customer for the supply of Goods or Services, or Goods and Services, in accordance with these Conditions.

Customer: the person or firm who purchases the Goods or Services, or Goods and Services, from the Supplier.

Deliverables: the deliverables set out in the Service Specification, to be produced by the Supplier for the Customer (as part of providing Services), if any.

Force Majeure Event: has the meaning given to it in clause 18.

Goods: the goods (or any part of them) set out in the Order Confirmation.

Goods Specification: any formal specification for the Goods, including any relevant plans or drawings, that is agreed in writing between the Supplier with the Customer, including any formal specification(s) confirmed in the Order Confirmation.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, 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: the Customer's order for the supply of Goods or Services, or Goods and Services, as set out in the Customer's purchase order form (**PO**) (or in the absence of a PO, the Customer's written acceptance of the Supplier's quotation, as the case may be).

Order Confirmation: means, subject to clause 1.2(f), the Supplier' s written acceptance of the Customer's Order, which will typically take the form of a formal order confirmation issued by the Supplier to the Customer confirming the description of the goods and/or services to be supplied (including quantities), price, any applicable Incoterms® Rule and other terms applicable to/details relevant to the Contract.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

Services Proposal: a written proposal given by the Supplier to the Customer setting out terms on which the Supplier may be willing to provide Services (and, if applicable) any Goods to be provided

in addition to the Services), including the price for the relevant Services (and, if applicable, Goods) and other relevant terms.

Service Specification: the description of or specification for the Services set out in the applicable Services Proposal.

Supplier Materials: has the meaning given in clause 11.1(h).

1.2 Interpretation:

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

(b) A reference to a party includes its successors and permitted assigns (and, in the case of a party who is an individual, their personal representatives).

(c) A reference to legislation or a legislative provision:

(i) is a reference to it as amended or re-enacted from time to time; and

(ii) includes all subordinate legislation made under that legislation or legislative provision.

(d) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** includes email.

(f) Wherever an Order Confirmation has been superseded by another, issued by the Supplier subsequently (including in circumstances where an updated Order Confirmation has been issued following any agreed changes to the Contract or its subject matter), a reference in these terms to the **Order Confirmation** means the most recent one.

2. Basis of contract

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

2.2 The Order shall only be deemed to be accepted when the Supplier issues an Order Confirmation, at which point and on which date the Contract shall come into existence.

2.3 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 or brochures or on the Supplier's website are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.

2.4 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 law, trade custom, practice or course of dealing (but for the avoidance of doubt, this is without prejudice to clause 3.3).

2.5 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.6 Any quotation, or Services Proposal, given by the Supplier shall not constitute an offer, and is only valid for a period of 5 Business Days from its date of issue (unless it expressly states otherwise).

2.7 Upon formation of the Contract, any special terms set out in:

(a) the Supplier's quotation (and confirmed in the Order Confirmation); or

(b) any applicable Services Proposal on which the Contract is based,

shall be incorporated into the Contract.

2.8 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. Incoterms®

3.1 In these Conditions, the Order Confirmation, any quotation issued by the Supplier and any other relevant documents issued by the Supplier:

(a) a reference to the **Incoterms®** or the **Incoterms® Rules** (or similar, including references to such terms which do not include the '®' symbol) is a reference to the Incoterms® Rules published by the International Chamber of Commerce; and

(b) unless stated to the contrary, a reference to one of the Incoterms Rules is a reference to that rule as set out in and referred to in the Incoterms® 2020 Rules.

3.2 In these Conditions, a reference to the **Applicable Incoterms® Rule** means:

(a) the Incoterms® Rule which is to apply to the Contract, as set out in the Order Confirmation (if any); or

(b) if the parties agree in writing, after the Order Confirmation is issued, that a different Incoterms® Rule is to apply to the Contract (which will typically coincide with the Customer accepted a revised quotation for the goods, or for the additional cost for the Supplier to supply on an alternative Incoterms® Rule), that rule,

including, wherever applicable, the place named next to the relevant Incoterms® Rule.

3.3 If, in relation to the Contract, there is an Applicable Incoterms® Rule, the terms set out in and matters prescribed by that Incoterms® Rule shall (subject to clause 3.4) be incorporated into and apply to the Contract, except to the extent that such terms/matters are inconsistent with, or excluded by, either:

(a) the specific terms for the Contract agreed between the parties and set out in the Order Confirmation; or

(b) these Conditions.

3.4 If the Order Confirmation sets out any modifications to, or exclusions of, terms set out in or matters prescribed by the Applicable Incoterms® Rule (or, after the Order Confirmation was issued, the parties agree any such modifications or exclusions in writing), the rule shall apply as modified.

4. Goods

4.1 The Goods are described in the Goods Specification.

4.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer (or any part of a Goods Specification which was supplied by the Customer), 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 reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:

(a) 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 (or the part of it) supplied by the Customer; and

(b) any defect (including any defect which results in any issue concerning the safety of the Goods or the use of them) where the defect is due (whether in whole or in part) to faults or omissions in the Goods Specification (or part of it) supplied by the Customer.

This clause 4.2 shall survive termination of the Contract.

4.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable law or regulatory requirement, and the Supplier shall notify the Customer in any such event.

5. Delivery of Goods

5.1 If, in relation to the Contract, there is an Applicable Incoterms® Rule:

(a) matters relating to transport or carriage of the Goods (or where applicable, the collection of the Goods by the Customer) shall be as prescribed by the Applicable Incoterms® Rule; and

(b) delivery of the Goods shall be completed at the point in time prescribed by the Applicable Incoterms® Rule.

5.2 If there is no Applicable Incoterms® Rule in relation to the Contract:

(a) if the Order Confirmation indicates that the Supplier intends to transport, or arrange transport of, the Goods to the Customer (or the Supplier has subsequently agreed to do so in writing), the Supplier shall deliver the Goods to the location set out in the Order Confirmation, or such other location as may be agreed between the parties before delivery (**Delivery Location**) promptly following the Supplier notifying the Customer that the Goods are ready, and delivery shall be completed on the Goods' arrival at the Delivery Location; or

(b) if the Order Confirmation does not indicate that the Supplier is to transport, or arrange transport of, the Goods to the Customer (and the Supplier has not subsequently agreed to do so in writing), the Customer shall collect the Goods from the premises of the Supplier (or if

applicable, the manufacturer or other supplier to the Supplier) at the location set out in the Order Confirmation (or in the absence of this, such other location as may be reasonably specified by the Supplier) (**Collection Location**) within five Business Days of the Supplier notifying the Customer that the Goods are ready, and delivery of the Goods shall be completed on the Goods being placed at the Customer's Disposal at the Collection Location.

5.3 Any dates or lengths of time quoted for delivery of the Goods are approximate only (and run from the issue of an Order Confirmation), and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods 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 or any other instructions that are relevant to the supply of the Goods.

5.5 If the Customer fails take or accept delivery of the Goods when the Customer is required to do under the Contract (and for the avoidance of any doubt, this shall include any failure by the Customer to take delivery as required by an Applicable Incoterms® Rule), 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,

(a) delivery of the Goods shall be deemed to have been completed at the point in time when the Customer should have first taken or accepted delivery of the goods; and

(b) without prejudice to any other rights of the Supplier in relation to the Customer's failure to take or accept delivery, the Supplier may:

(i) store the Goods, or arrange storage of the Goods, until actual delivery takes place;

(ii) charge the Customer for all costs and expenses (including insurance) relating to storage of the Goods, including re-charging any such costs charged to the Supplier by third parties (whether for storage arranged by the Supplier pursuant to clause 5.5(b)(i) or otherwise).

The matters set out in clause 5.5 apply even if the Customer's failure to take or accept delivery of the Goods is caused by a Force Majeure Event.

5.6 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. Supply quantity tolerances

6.1 Background relevant to this clause and definitions:

(a) Many of the products that the Supplier supplies are made to order, and the production process for a significant proportion of them is complex. As a result, the yield of product can vary significantly from batch to batch (with this being most extreme for low volume orders, where a small loss of material will have a large impact on percentage yield). The provisions in this clause reflect the above, and also the terms which the Supplier's own suppliers impose on the Supplier in relation to supply/delivery tolerances.

(b) Certain products will be supplied either on a:

(i) **Per Unit Basis:** This means that the price for the Goods in question will be adjusted to reflect the actual quantity of Goods supplied. For example, if the Customer has ordered 100kg of product at a price of £100 per kg, and 90kg is delivered, the price for those goods will be adjusted to £9,000 (or if 110kg is delivered, the price will be adjusted to £11,000). Or if the Customer has ordered 500 individual units of a product at a price of £10 per unit and 450 units are delivered, the price for those goods will be adjusted to £4,500 (with a corresponding increase if a greater quantity is delivered over the quantity ordered).

(ii) **Lot Charge Basis:** This means that the price is not adjusted for the quantity that is actually supplied. The Customer pays the agreed price for the Goods in question, even though they may receive under, or over, the quantity of Goods that was ordered.

6.2 In relation Goods which are manufactured or produced to a Customer's Order, the Supplier shall undertake the production process, or for Goods which are manufactured or produced by a third party shall procure that the third party shall undertake the production process, in such a way as to aim for the output from the process to result in the quantity of Goods ordered by the Customer.

6.3 Provided that (to the extent, if any applicable to the Goods and Order in question) the Supplier has complied with its obligations in clause 6.2, the Supplier may deliver more or less than the quantity of Goods ordered as long as the amount of the under/over supply does not exceed the applicable supply quantity tolerance set out in the tables at clause 6.5 below, and (provided that the applicable tolerance is not exceeded), the Supplier's obligation to deliver the Goods shall be deemed to be complete (and the Customer may not reject them), and

(a) for Goods which are supplied on a Per Unit Basis, the price for those Goods shall be adjusted appropriately to reflect the quantity actually supplied; or

(b) for Goods which are supplied on a Lot Charge Basis, there shall be no adjustment to the agreed price for those Goods (notwithstanding that the quantity supplied may be different to the quantity ordered).

6.4 If the Order Confirmation states that Goods are to be supplied on a Lot Charge Basis (or words to the same effect), supply of those Goods shall be on a Lot Charge Basis. If the Order Confirmation states that Goods are to be supplied on a Per Unit Basis (or words to the same effect), or is silent as to whether the Goods are to be supplied on a Lot Charge Basis or a Per Unit Basis, the supply shall be on a Per Unit Basis (wherever relevant to the Goods in question).

6.5 **Supply quantity tolerances tables**

The applicable tolerance for each type of product/quantity ordered is as set out in the body of the table for that product type/quantity ordered combination).

LEAD TABS

Order Quantity / **Product**	up to 300 pairs	more than 300 but not more than 1000 pairs	more than 1000 but not more than 5000 pairs	more than 5000 pairs
Lead tabs	+/- 20%	+/- 20%	+/- 10%	+/- 10%

OTHER PRODUCTS

Order Quantity / **Product**	ANY
All other products not mentioned above	+/- 20%

7. Quality of Goods

7.1 The Supplier warrants that on delivery the Goods shall:

(a) conform with the Goods Specification;

(b) be free from material defects in design, material and workmanship; and

(c) be of satisfactory quality.

For the purposes of this clause, **satisfactory quality** has the meaning that the same term would have in the Sale of Goods Act 1979 if subsection 14(2B)(a) of that Act (being the words "fitness for all the purposes for which goods of the kind in question are commonly supplied") were deleted.

7.2 Subject to clause 7.3, if:

(a) the Customer gives notice in writing to the Supplier within the Notification Period (as defined in clause 8.1) that some or all of the Goods do not comply with the warranty set out in clause 7.1;

(b) the Supplier is given a reasonable opportunity of examining such Goods; and

(c) 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 (except where the Supplier has agreed in writing to cover the cost of the return),

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

7.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 7.1 if:

(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 7.2;

(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of the Supplier;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

(f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

7.4 Except as provided in this clause 7, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.

7.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

8. Notifying the Supplier (and wherever applicable, the carrier(s)) of issues relating to the Goods

8.1 The Customer must notify the Supplier of any issues relating to the Goods within the applicable time period set out below (**Notification Period**):

(a) in the case of any damage to the Goods, within 5 Business Days of the date on which the Goods are received by the Customer;

(b) in the case of any non-compliance with the warranty set out in clause 7.1, or any omissions from the Goods delivered, as soon as reasonably practicable following discovery and always:

(i) within 30 days of the date on which the Customer receives the Goods in respect of any non-compliance which would be apparent from an inspection of the Goods carried out upon receipt, and

(ii) in any other case, within 12 months of the date on which delivery of the Goods occurred.

8.2 In the case of there being any damage to the Goods, the Customer must (in addition to notifying the Supplier) also immediately notify each relevant carrier.

9. Title and risk

9.1 The risk in the Goods shall pass to the Customer in accordance with the Applicable Incoterms® Rule (or in the absence of this, on completion of delivery).

9.2 Title to the Goods shall not pass to the Customer until the earlier of the following:

(a) the Supplier receives payment in full (in cash or cleared funds) for the Goods, in which case title to the Goods shall pass at the time of payment; and

(b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 9.4.

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

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.1(a) to clause 15.1(c); and

(e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:

(i) the Goods; and

(ii) the ongoing financial position of the Customer.

9.4 Subject to clause 9.5, 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:

(a) it does so as principal and not as the Supplier's agent; and

(b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

9.5 At any time before title to the Goods passes to the Customer, the Supplier may:

(a) by notice in writing, terminate the Customer's right under clause 9.4 to resell the Goods or use them in the ordinary course of its business; and

(b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and 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.

10. Supply of Services

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

10.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification, and any dates which are subsequently agreed by the Supplier in writing, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

10.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, 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.

10.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

11. Customer's obligations

11.1 The Customer shall:

(a) ensure that the terms of the Order and any information it provides in either or both the Service Specification and the Goods Specification are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the Services;

(c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

(d) 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;

(e) if applicable in relation to the Services to be supplied, prepare the Customer's premises for the supply of the Services;

(f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(g) comply with all applicable laws, including health and safety laws;

(h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) which are 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

(i) comply with any additional obligations on the part of the Customer as set out in the Service Specification.

11.2 The Customer shall also fully, properly and punctually perform all obligations on the part of the Customer which arise under an Applicable Incoterms® Rule, and shall indemnify the Supplier against all liabilities, damages, losses, fines, expenses, costs or other losses which the Supplier suffers or incurs as a result of any failure by the Customer to do so.

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

(a) 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;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 11.3; and

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

12. Charges and payment

12.1 The price for Goods:

(a) shall, subject to clause 6 and clause 12.3, be the price set out in the Order Confirmation or, in the absence of an Order Confirmation which states a price, the price that was quoted by the Supplier or, in the absence of both of these, the Supplier's standard price for the relevant Goods at the time of the order; and

(b) unless the Order Confirmation (or in the absence of an Order Confirmation, the supplier's quotation) states otherwise (which shall include to the extent that the Applicable Incoterms® Rule prescribes that any relevant costs are to be borne by the Supplier), shall be exclusive of all costs and charges:

(i) of packaging and any insurance and transport of the Goods;

(ii) any costs which, under the terms of the Applicable Incoterm® Rules, are for the Customer to bear,

each of which shall be invoiced to (and paid by) the Customer.

12.2 In relation to Services:

(a) The charges for Services shall be as set out (or calculated as set out) in the applicable Services Proposal.

(b) If the Services Proposal sets out that the charges for Services are to be calculated on a time and materials basis then (except to the extent that the Services Proposal provides to the contrary):

(i) the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Services Proposal (or for any person whose rate isn't set out in the Services Proposal -- for example, because they joined the Supplier or the project after the Services Proposal was written -- at the Supplier's normal daily fee rate for that person for the type of work they carry out in relation to the Services) ; and

(ii) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day during the Supplier's normal office hours worked on Business Days.

(c) Except to the extent that the Services Proposal states that such matters are included in the price for the Services, 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.

12.3 The Supplier reserves the right to:

(a) increase:

(i) the Supplier's daily fee rates; and/or

(ii) the charges for any Services which are not calculated on a time and materials basis,

from time to time, provided that this shall not be more than once in any 12 month period, and provided that any such increase(s) shall not exceed an a percentage in excess of the percentage increase in the Consumer Prices Index in the preceding 12-month period;

(b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

(i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, and increases in any of the following: taxes and duties, labour, materials and other manufacturing costs, prices charged by the Supplier's own suppliers, alloy surcharges and costs of carriage or other logistics costs);

(ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

(iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

12.4 In respect of Goods (and all charges relating to Goods), unless stated otherwise in the Order Confirmation:

(a) Invoicing: The Supplier may invoice the Customer on or at any time after the Goods have been despatched by the Supplier (or in respect of any Goods which the Customer is to collect or for which for any other reason there will be no despatch of the Goods by the Supplier, at any time on or after completion of delivery).

(b) Payments:

(i) If the Order (or any part of it) is for Goods for export to outside the United Kingdom, or the Customer does not have an Approved Credit Account (or it has been suspended), or if any of these apply then:

(A) Payment in full is due upon the Supplier's acceptance of the Order (against a pro-forma invoice).

(B) Upon the Supplier invoicing in accordance with clause 12.4(a), any payment that has already made by the Customer shall be applied against such invoice(s), and for any amount which remains outstanding after application of such sums, payment shall be due immediately.

(ii) If the Customer has an Approved Credit Account (which has not been suspended) and no part of the Order is for Goods to export outside the United Kingdom, the Customer shall pay each invoice submitted by the Supplier within 30 days of the date of the invoice, or in accordance with any alternative credit terms for the Approved Credit Account agreed by the Supplier and confirmed in writing to the Customer.

12.5 In respect of Services (and all charges relating to Services):

(a) Invoicing: The Supplier shall invoice the Customer as set out in the applicable Service Proposal (or to the extent that the Service Proposal does not set out any such details: (i) for Services to be charged on a time and materials basis, monthly in arrear; and in any case on completion of the Services; or (ii) for other Services, at any time after accepting the Customer's order).

(b) Payment: If the Customer has an Approved Credit Account (which has not been suspended), the Customer shall pay each invoice submitted by the Supplier within 30 days of the date of the invoice, or in accordance with any alternative credit terms for the Approved Credit Account agreed by the Supplier and confirmed in writing to the Customer. If the Customer does not have an Approved Credit Account (or it has been suspended), the Customer shall pay each invoice on presentation.

12.6 All payments by the Customer in connection with the Contract shall be:

(a) made in full and in cleared funds to a bank account nominated in writing by the Supplier; and

(b) unless agreed otherwise in writing by the Supplier, be made in the same currency in which the price was stated in the Order Confirmation (or in the absence of this, in GBP).

12.7 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 or both, or other charges payable by the Customer, as applicable, at the same time as payment is due for the supply of the Services or Goods or other charges.

12.8 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 15, 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 12.8 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%.

12.9 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).

13. Intellectual property rights

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

13.2 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 perpetual and irrevocable licence to copy and modify the Deliverables (excluding drawings, designs or other materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

13.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 13.2.

13.4 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 Services to the Customer.

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

14.1 References to liability in this clause 14 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

14.2 Nothing in the Contract limits any liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

(d) defective products under the Consumer Protection Act 1987; or

(e) any liability that legally cannot be limited.

14.3 Subject to clause 14.2, the Supplier's total liability to the Customer:

(a) for loss arising as a result of the negligence of the Supplier (or its employees and agents) in the provision of Services shall not exceed an amount equal to 1.5 times the price payable by the Customer for Services under the Contract; and

(b) for all other loss or damage (including loss or damage arising from a Contract, or part of it, which is for the supply of Goods), an amount equal to the price payable by the Customer under the Contract (excluding, if applicable, the price for any Services to which the cap set out in clause 14.3(a) applies).

14.4 Subject to clause 14.2, the Supplier shall not be liable for any of the following types of loss, which are wholly excluded:

(a) loss of profits;

(b) loss of sales or business;

(c) loss of agreements or contracts;

(d) loss of anticipated savings;

(e) loss of use or corruption of software, data or information;

(f) loss of or damage to goodwill; and

(g) indirect or consequential loss.

14.5 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 7 and clause 10. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

14.6 This clause 14 shall survive termination of the Contract.

15. Termination and suspension

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

(a) the other party 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), obtaining a moratorium, 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;

(b) 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

(c) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

15.2 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:

(a) the Customer fails to pay any amount due under the Contract on the due date for payment; or

(b) the Customer commits a material breach of any other term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified to do so.

15.3 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 the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.1(a) to clause 15.1(c), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

15.4 For the avoidance of doubt, the Customer has no right to cancel an order, after the Contract has been formed, for convenience. In the absence of a repudiatory breach of the Contract by the Supplier or some other event that gives the Supplier a right to terminate the Contract, an order can only be cancelled by the Customer with the Supplier's agreement in writing (or confirmed in writing). If the Supplier agrees to cancellation of an order, it may make its agreement subject to any conditions the Supplier sees fit, including payment by the Customer of all costs and expenses incurred by the Supplier in relation to the cancelled order (including the cost of goods or materials the Supplier has purchased or committed to purchase), re-stocking fees, and a sum in respect of the profit the Supplier will lose as a result of the order being cancelled.

16. Consequences of termination

16.1 On termination of the Contract:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of any Goods or Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of the Supplier Materials and any Deliverables 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.

16.2 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.

16.3 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.

17. Confidentiality

17.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 17.2.

17.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 17; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

18. Force majeure

18.1 Except where expressly provided otherwise in these Conditions, neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving not less than 10 Business Days' written notice to the affected party.

19. General

19.1 **Assignment and other dealings**

(a) 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.

(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, 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.

19.2 **Notices**

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and in the English language, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid post or other next working day delivery service (or by airmail post if sent to an address outside the country of posting), or by commercial courier, or by e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 19.2(a); if sent by pre-paid first class post or other next working day delivery service, on the second Business Day after posting (or, if sent by airmail post, on the fifth Business Day after posting); if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, at the time of transmission, provided that if deemed receipt under this clause would occur outside business hours in the place of receipt, it shall be deferred until business hours

next resume. In this clause, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

(c) This clause 19.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 19.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

19.4 **Waiver**.

(a) Except as set out in clause 2.5, 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 right or remedy.

(b) A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

19.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

19.6 **Entire agreement.**

(a) The Contract constitutes the entire agreement between the parties.

(b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

19.7 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

19.8 **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).

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

19.10 **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.