

## **SALES TERMS**

### **1. INTERPRETATION**

1.1. These Sales Terms shall commence on the date of last signature to the first Order and shall continue to apply to any further pre-order or sale of Units or Parts and Additional Parts. From time to time the Customer may request Goods from the Supplier, including as may be provided alongside any separately provided Maintenance services, however, these Sales Terms shall govern the supply of all Goods. Any applicable Maintenance services shall be provided pursuant to the Maintenance Terms and do not form part of this Contract. For the avoidance of any doubt, the lease of any Goods from the Supplier to the Customer is not governed by these Sales Terms and is instead covered by the Lease Terms which do not form part of this Contract.

#### **1.2. Definitions:**

**Additional Parts:** means those spare, extra or otherwise additional Parts supplied to the Customer in addition to those that make up each whole Unit ordered, in each case as set out or described on the Order.

**Bespoke Goods:** has the meaning in clause 2.6 of these Sales Terms.

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

**Charges:** means the Price (including any Deposit) together with any and all other costs, charges or sums incurred or suffered by the Supplier in relation to the Goods under an Order (including, without limitation, the costs of any relevant packaging, insurance, transport or other peripheral services concerning the Goods the subject of the Order), including those set out on the Order, together with any and all applicable taxes, duties or levies arising or charged on any such Charges, but excluding any charges noted on the Order which relates to Maintenance.

**Consumable(s):** includes, without limitation, tyres, joystick springs, microswitches, electronic components and lubricants and other applicable items specified by the Supplier as the same as such list is amended from time to time by the Supplier

**Contract:** the distinct contractual agreement between the Supplier and the Customer for the sale and purchase of specific Goods in accordance with the Order, these Sales Terms and the User Manual. This Contract does not include the Maintenance Terms as regards the supply of Goods just as these Sales Terms do not relate to the provision of Maintenance Services except to the limited extent expressly incorporated therein).

**Customer Delivery Location:** the address for re-location of the Goods as set out in the Order.

**Deposit:** means, as the case may be, (i) the amount of the Price and/or other Charges payable by the Customer prior to the date when the total Price and other Charges becomes fully due, such Deposit being as specified on an Order or (ii) where clause 2.6 applies, the full Price and all other Charges for Bespoke Goods.

**Delivery:** means the Supplier making the Goods available at its premises for collection (and “Delivered” shall be construed accordingly).

***Delivery Date:*** the estimated delivery date specified in the Order as such may be amended, revised or altered by the Supplier from time to time in accordance with these Sales Terms, or the date of actual Delivery of the Goods, whichever occurs later.

***Excluded Causes:*** means

- (i) the use of a Unit with goods or materials not supplied or approved in writing by the Supplier;
- (ii) any maintenance, repair, service, alteration, modification or adjustment performed by persons other than the Supplier or its employees or agents unless approved in advance in writing by the Supplier;
- (iii) the Customer alters, modifies, repairs, services or maintains the Units without the express written consent of the Supplier in each instance and/or otherwise not in accordance with the User Manual and/or otherwise uses materials or parts not supplied by or approved in writing for use by the Supplier;
- (iv) a defect which arises (howsoever arising) during transit to the Customer Delivery Location or as a result of the Customer or third party not under the control and direction of the Supplier moving or relocating a Unit;
- (v) the use of a Unit in breach of the terms of this Agreement or the Sales Terms;
- (vi) the defect arises because the Customer fails to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of Units and/or to follow the User Manual or good industry practice regarding the storage, commissioning, installation, use and maintenance of Units;
- (vii) a failure, interruption or surge in the electrical power or its related infrastructure connected to a Unit including as may be caused as a result of any failure or sub-optimal operation or poor performance of any resistor, fuse, battery, or any other internal electronic component failure which is itself caused by any Excluded Cause;
- (viii) the defect arises as a result of Third Party Items or the Customer's or any third parties (including any person the Customer permits to use a Unit) wilful damage, negligence, misuse, sub-optimal storage, maintenance or operating conditions (including, without limitation, where a Unit is subjected to irresponsible, reckless or excessive usage by the Customer);
- (ix) excessive wear and tear generally or any other usage resulting in significant reduction of the expected working life of any component, Part or Unit;
- (x) as a result of impact damage (for example, to any frame or body panels), gunshot, drilling, hazardous liquid or chemical damage or exposure to extreme heat or cold or vacuum which is not directly and solely caused by the Supplier;
- (xi) as a result of a force majeure event of the nature referred to in clause 12.1 of this agreement;  
or
- (xii) a gap or significant delay in the application of maintenance generally, such as where the Customer has made use of the Units or any Goods whilst not subject to an ongoing Maintenance Terms and later wishes to resume of commence any Maintenance services.

***Force Majeure Event:*** events, circumstances or causes beyond a party's reasonable control.

**Goods:** the goods (or any part of them), including but not limited to the Units, any Bespoke Goods, the Additional Parts or any Part (or Parts) of a Unit in each case as set out in the Order and those Parts included in a Unit which are supplied alongside any Maintenance Services (as such term is defined in the Maintenance Terms) subject to these Sales Terms.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, 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.

**Maintenance:** means the optional support and maintenance services provided for Units which is subject to the Maintenance Terms and which is a separate Contract to this Agreement.

**Maintenance Terms:** means the separate Contract setting out the terms upon which Maintenance Services are provided which is available at [www.aqualand-industries.com/terms-and-conditions/maintenance](http://www.aqualand-industries.com/terms-and-conditions/maintenance).

**Order:** an order for Goods requested by the Customer in accordance with the format of the Supplier's standard order template for the sale of goods from time to time which refers to and incorporates these Sales Terms.

**Part and/or Parts:** shall be taken to mean the individual components of, and which make up, the Units as may be sold by the Supplier or otherwise supplied under these Sales Terms.

**Price:** the price or charges for the Goods as set out in the Order.

**Sales Terms:** these terms and conditions set out in clause 1 to clause 12 (inclusive).

**Unit or Units:** shall mean a single whole product (or multiples thereof set out in an Order) as the same are generally advertised by the Supplier on its website or otherwise (including, without limitation, the Supplier's Crazy-Bugz and Bod-Jet products and systems and such other products as it makes generally available for sale from time to time).

**User Manual:** the Supplier's User Manual for usage, storage and maintenance (as such may be amended by the Supplier from time to time) of the Units as set out at [www.aqualand-industries.com/terms-and-conditions/manuals](http://www.aqualand-industries.com/terms-and-conditions/manuals).

### 1.3. Interpretation:

- (a) references to times are all to times in London England;
- (b) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

- (c) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (d) a reference to writing or written includes email but shall not include fax; and
- (e) these Sale Terms shall apply to the exclusion of any other agreement, contract or terms proposed or put forward by the Customer and the Supplier shall not supply the Goods on terms other than the Sale Terms or the applicable standard terms of the Supplier's Contract as the case may be.

## 2. ORDER PROCESS & PAYMENTS ON ORDER

- 2.1. Each Order shall form a separate and distinct Contract between the Supplier and the Customer and shall continue in force unless terminated in accordance with clause 11 below.
- 2.2. The Customer shall submit a request to the Supplier to provide a draft Order for Goods to the Customer. On receipt of the draft Order, the Customer shall promptly (and in any event within 15 Business Days after which time the draft Order will no longer be valid for approval by the Customer) respond with their approval to that Order by signing and returning a copy to the Supplier or the Customer may request changes to be made by the Supplier. Such requested changes may be either accepted or rejected by the Supplier and where such changes are accepted, the Supplier shall then present the Customer with a revised Order which the Customer shall promptly (and in any event within 15 Business Days after which time the draft Order will no longer be valid for approval by the Customer) respond with their approval to that Order by signing and returning a copy to the Supplier. In the event of further changes, the process under this clause shall be repeated until a final Order is issued by the Supplier and signed and returned by the Customer.
- 2.3. On receipt of an Order signed by the Customer, the Supplier shall supply the Customer with a fully signed copy of the Order by return and shall confirm in writing that the Order has been accepted by the Supplier pursuant to the Contract.
- 2.4. The Supplier shall retain the absolute right to accept or decline Orders, or to terminate them at any time prior to the Delivery Date.
- 2.5. Subject to clause 2.6, the Customer must then pay the Deposit in cleared funds and by bank transfer for receipt by the Supplier by no later than 5pm on the date that is three (3) Business Days from and including the date of the Supplier's confirmation of acceptance of that Order or such other date as advised by the Supplier from time to time. Such payment must be made to the bank account of the Supplier nominated for the purpose.
- 2.6. In the event that no percentage of Deposit is expressed in the Order Form, or where the Customer requests that any Goods are made bespoke or according to a non-standard specification such as customer livery or other modifications, cosmetic or otherwise as detailed on the Order ("**Bespoke Goods**"), the Customer shall, if so requested by the Supplier, be bound to pay the full Price and the other Charges relating to such Bespoke Goods to the Supplier by no later than 5pm on the date that is three (3) Business Days from and including the date of the Supplier's confirmation of acceptance

that Order or such other date as advised by the Supplier from time to time. Such payment must be made to the bank account of the Supplier nominated for the purpose.

- 2.7. Once the Customer has paid the Deposit, the Order shall be placed into a production/build queue and the Customer acknowledges that only then shall the Supplier order the parts and materials required to produce the Goods. In the absence of anything to the contrary, the initial estimated Delivery Date shall be deemed to be twelve (12) weeks after the date of acceptance of the Order.
- 2.8. The Goods are built and supplied to order in each case and the Customer may not cancel, delay or refuse to take Delivery of an Order once such has been accepted by the Supplier, and the Customer shall be bound from the date of the Supplier's confirmation of acceptance of that Order to pay the Price and other Charges to the Supplier in accordance with the terms of the Contract.
- 2.9. Without limiting any other rights or remedies the Supplier may have, if the Customer cancels an Order prior to Delivery, delays Delivery or fails to take Delivery, then:
  - (a) the amount of the Deposit shall be forfeit to the Supplier and the Supplier shall be entitled to enforce its rights in relation to the remainder balance of the Price and other Charges in accordance with this Contract; and/or
  - (b) if the cancelled or non-delivered Order relates to Bespoke Goods then the full Price and any other Charges shall be forfeit to the Supplier and no refund shall be due to the Customer and/or where the full Price or any other Charges for the Bespoke Goods has not been paid up the Supplier shall be entitled to enforce its rights in relation to the balance of the Price and other Charges relating to the Bespoke Goods.
- 2.10. Without limiting any other rights or remedies the Supplier may have (including under the provisions of clause 2.9), where a Customer seeks to delay Delivery (or the manufacture of its ordered Goods), the Supplier shall be entitled to continue to manufacture the Goods ready for Delivery or to suspend the manufacture of any unfinished Goods and/or store any finished or unfinished Goods on behalf of the Customer and the Customer shall indemnify the Supplier for any and all losses, costs, expenses or other liabilities (including the cost of storing any finished or unfinished Goods in its or any third party premises) incurred by the Supplier as a result of the customer delaying Delivery or the manufacture of its ordered Goods. The Customer acknowledges that where manufacture is suspended, the Customer will lose its place in the Supplier's production/build queue and its Delivery Date and will only be reissued a place and a revised Delivery Date on the suspension of manufacture being agreed by the Supplier as having been lifted.
- 2.11. The Supplier shall have the right at any time to cancel an Order prior to Delivery in accordance with clause 11 in which case it shall repay any prepaid Deposit or other unearned Charges to the Customer.
- 2.12. The Supplier retains the absolute right to adjust the Delivery Date, the Price, the Charges, or any other term of the Order prior to Delivery (and to do so more than once).
- 2.13. Without limiting clause 2.12, the Supplier may make reasonable adjustments to the Price and the other Charges at any point (and to so more than once) up until Delivery to take into account any increases in costs relating to the following:
  - (a) Foreign currency exchange rates;

- (b) Supply chain costs;
  - (c) Delivery and associated costs; and
  - (d) regulatory changes.
- 2.14. Where the Supplier notifies the Customer of a Price increase that falls outside the scope of clause 2.13 above, or where such Price increase represents an increase of more than 10% of the total Price, the Customer shall be permitted to cancel an affected Order by providing written notice to that effect to the Supplier by no later than 5pm on the date that is five (5) Business Days from and including the date of the Supplier's notice to the Customer of the Price increase, and any pre-paid Charges shall be repaid to the Customer.
- 2.15. All Orders are subject to all parts and materials used in the manufacture of the Goods remaining available for supply to the Supplier and such not being defective or incapable of being used in the Goods by the Supplier.
- 2.16. The Customer is responsible for ensuring that Orders are complete and accurate. The Customer shall give the Supplier all necessary information that the Supplier reasonably requires in order to fulfil each Order.

### **3. SUPPLY OF THE GOODS**

- 3.1. The pricing of the Goods is volume based and the Supplier shall not be bound to accept any Order for less than four (4) Units (the Minimum Quantity).
- 3.2. Where the Supplier agrees to provide any Goods under an order which do not meet the Minimum Quantity, the Supplier shall not be bound to accept further Orders at the same price.
- 3.3. Any samples, drawings, descriptive matter, advice, or advertising produced by the Supplier and any descriptions or illustrations or other general guidance contained in the Supplier's catalogues or brochures or online are produced for the sole purpose of giving an approximate idea of the Goods described in them and the Supplier shall not be liable for any amendment to therefrom however arising, nor shall any such amendment in any way invalidate the Contract between the Supplier and the Customer in respect of the Goods.
- 3.4. Any advice given by the Supplier as to the suitability of the Goods or their usage in a particular context or location shall be provided for guidance only and any such statements, whether oral or in writing, shall not be relied upon by the Customer as against the Supplier. Such statements shall not form part of the Contract or have any contractual force. The Customer should make their own professional judgement as to the economic, practical and other suitability of the Goods.
- 3.5. The Supplier reserves the right to amend the specification of the Goods at any time including, without limitation, as may be required by any applicable statutory or regulatory requirements. The Supplier shall not be liable for any amendment to the specification however arising, nor shall any such amendment to the specification in any way invalidate the Contract between the Supplier and the Customer in respect of the Goods.
- 3.6. The Customer acknowledges that the Goods are "off-the-shelf" products and as such are not generally tailored to an specific requirements, however, to the extent that the Goods are Bespoke Goods, 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 and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's production of Bespoke Goods in accordance with any such request, direction, materials or other input provided or directed by the Customer. This clause 3.6 shall survive termination of the Contract.

#### **4. DELIVERY**

- 4.1. The Supplier shall have completed Delivery of the Goods when it notifies the Customer that the Goods are ready for collection from the Supplier's premises. The Customer will be deemed to have accepted Delivery of the Goods on such notice being given to it by the Supplier.
- 4.2. The Supplier recommends that the Customer is present at Delivery to collect and inspect the Goods prior to onward transport.
- 4.3. The Customer is responsible for arranging the collection and onward transport of the Goods in every instance.
- 4.4. Where the Customer requests that the Supplier relocates the Goods to a Customer Delivery Location, the Supplier shall, at the cost of the Customer, use reasonable commercial endeavours to package and transport the relevant Goods to the Customer Delivery Location promptly following the Delivery Date. In the event of any delay, the Supplier shall use reasonable commercial endeavours to inform the Customer of a revised date as soon as commercially practicable after becoming aware of any factors that may delay the transport of Goods to the Customer Delivery Location. The Customer acknowledges that the Supplier is not in the business of providing haulage or courier services and as such the sole risk in any such onward transport of the Goods by the Supplier to the Customer Delivery Location shall be borne by the Customer alone. The Customer acknowledges that the Supplier shall accept no liability whatsoever and howsoever arising for such onward transport or any loss or damage to the Goods and that the cost charged to the Customer for such transport shall not take into account any insurance.
- 4.5. The Customer is solely responsible for arranging all insurance or other covers as it considers necessary so as to protect itself against the risk of damage to the Goods whilst in transit to its Customer Delivery Location.
- 4.6. Delivery Dates are approximate only, and the time of delivery is not of the essence under this Contract or any Order. The Supplier shall not be liable for any delay in delivery of any Goods whatsoever, whether or not caused by factors within or outside of its control, except to the extent expressly set out in clause 4.7 below.
- 4.7. If the Supplier fails to deliver Goods by the relevant Delivery Date the Customer's sole and exclusive remedy and the Supplier's entire liability shall be limited to rearranging Delivery to occur within a commercially reasonable time following the missed estimated Delivery Date where possible. This shall be without prejudice to any right of the Supplier to terminate any Order in accordance with this Contract.
- 4.8. If, by 5pm on the date that is ten (10) Business Days from and including the day on which the Supplier attempted to make Delivery of Goods, the Customer has not taken delivery of or collected those Goods, the Supplier may resell or otherwise dispose of part or all of the Goods and, after

deducting reasonable storage and selling costs, accounting to the Customer for any excess over the Price, or charge the Customer for any shortfall below the Price of the Goods or the Charges.

- 4.9. If the Supplier delivers up to and including 10% more or less than the quantity of Goods (not including Units) ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.
- 4.10. The Supplier may provide multiple Orders and/or Goods simultaneously or it may deliver against individual Orders and/or Goods by instalments, which may be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.

## **5. QUALITY AND FITNESS FOR PURPOSE**

- 5.1. Except for Third Party Items and Consumables as set out in Clause 5.2 below, and subject to clause 5.3, the Supplier warrants that, for a period of thirty (30) days from the Delivery Date (warranty period), the Goods shall:
- (a) conform in all material respects with their description as generally advertised by the Supplier or under the User Manual; and
  - (b) be free from material defects in design, materials and workmanship.
- 5.2. Notwithstanding clause 5.1 the Supplier does not provide any warranty in relation to Consumables or Third Party Items and the Customer acknowledges and agrees that its exhaustive remedy as against the Supplier in relation to any issue with a Third Party Item or Consumable shall be for the Supplier to either refer the Customer to the relevant third party supplier of that Consumable or Third Party Item, or if the Supplier so wishes, the Supplier shall enforce its contractual rights against such third parties (to the extent such rights are available to the Supplier in seeking a replacement Consumable or Third Party Item.
- 5.3. Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Supplier during the warranty period, within three (3) Business Days after discovery that some or all of the Goods do not comply with the warranties set out in clause 5.1; and
  - (b) the Supplier is given a reasonable opportunity of examining such Goods, or where requested by the Supplier, where the Customer has provided video and other image evidence to the satisfaction of the Supplier; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business (or such other location as may be designated by the Supplier) at the Supplier's cost,
- the Supplier shall, at its sole option and commercial discretion, repair or replace any Goods that are found to be defective, or refund the price of such defective Goods in full.
- 5.4. The Supplier shall not be liable for Goods' failure to comply with the warranties set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving notice of defects in accordance with clause 5.2;
  - (b) the defect arises (howsoever arising) during transit from the Delivery location to any Customer Delivery Location;
  - (c) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods and/or the User Manual and/or good trade practice regarding the same;
  - (d) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
  - (e) the Customer alters, modifies, repairs, services or maintains such Goods without the express written consent of the Supplier in each instance and/or otherwise in accordance with the User Manual and/or otherwise uses materials or parts not supplied by or approved in writing by the Supplier;
  - (f) the defect arises as a result of fair wear and tear;
  - (g) the defect arises as a result of a failure, interruption or surge in the electrical power or its related infrastructure connected to or used to charge the Goods;
  - (h) the defect arises as a result of the Customer's or any third parties (including any person the Customer permits to use the Goods) wilful damage, negligence, misuse, abnormal storage, maintenance or operating conditions (including, without limitation, where the Goods are subjected to irresponsible, reckless or excessive usage by the Supplier);
  - (i) the defect arises as a result of impact damage, hazardous liquid or chemical damage or exposure to extreme heat or cold;
  - (j) the Goods differ from their description or sample as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
  - (k) the defect arises as a result of a Force Majeure Event or any of the Excluded Causes; or
  - (l) the Customer fails to procure suitable maintenance for the Units, such as the Maintenance Services, or where such maintenance falls below the required standard as set out in the User Manual.
- 5.5. The Supplier's only liability to the Customer, and the Customer's sole remedy, if the Goods fail to comply with the warranties set out in clause 5.1 is as set out in this clause 5.
- 5.6. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.7. The terms of the Contract shall apply to any repaired or replacement Goods supplied by the Supplier, however, the warranty set out in clause 5.1 shall not be deemed to be extended or renewed in relation to resupplied Goods.

## **6. TITLE, RISK AND PROPERTY**

- 6.1. Risk in the Goods shall pass to the Customer at the point of Delivery regardless of any onward transport provided or arranged by the Supplier.

- 6.2. Title to Goods shall only pass to the Customer once the Supplier receives payment in full (in cash or cleared funds) for all Charges relating to them and where Delivery has also taken place. The Customer acknowledges that the Supplier may enter the premises of the Customer, or seek a legal order to enforce the same, to recover any Goods where the Customer has not paid all applicable Charges.
- 6.3. Notwithstanding any transfer of title to the Goods, all Intellectual Property Rights in the Goods shall remain the property of the Supplier or its third-party licensors where appropriate and the Customer shall not interfere with or otherwise obscure any copyright or similar intellectual property rights notices attached to the Goods.

## **7. PRODUCT RECALL**

- 7.1. If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market (Recall Notice) it shall immediately notify the Supplier in writing enclosing a copy of the Recall Notice.
- 7.2. Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the Supplier and only then in strict compliance with the Supplier's instructions as to the process of implementing the withdrawal.

## **8. PRICE AND PAYMENT**

- 8.1. The Customer shall pay the Charges in accordance with this clause 8.
- 8.2. The Price is not expressed as inclusive of the other Charges arising under this Contract which shall be invoiced to the Customer in addition to the Price. The Price and all other Charges shall be exclusive of value added tax or any other taxes, duties or levies which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to the receipt of a valid VAT/tax invoice.
- 8.3. The Supplier may invoice the Customer for the Charges (taking into account any Deposit or other sum paid prior to Delivery pursuant to clause 2) on, or at any time after, it confirms acceptance of the Order to the Customer and (subject to clause 2.6, where applicable, in respect of Bespoke Goods) the Customer shall pay such invoices in full in cleared funds and by bank transfer for receipt by the Supplier by no later than 5pm on the date that is five (5) Business Days prior to (and including) the Delivery Date. Payment shall be made to the bank account nominated in writing by the Supplier.
- 8.4. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 11:
- (a) the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
  - (b) the Supplier shall suspend all deliveries of Goods or the provision of services under any other contract with the Customer until payment has been made in full.
- 8.5. The Customer shall pay all amounts due under the Contract by bank transfer and in full without set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by

law). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Customer.

## **9. LIMITATION OF LIABILITY**

9.1. To the limited extent that liability cannot be excluded by law, nothing in this Contract shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective product liability arising under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2. Subject to clause 9.1:

- (a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, loss of opportunity, loss of or damage to goodwill, loss of data, loss of anticipated savings or commercial advantage, or any indirect or consequential loss arising under or in connection with the Contract (including for any such losses arising as a result of the Supplier exercising its rights under clause 2.10);
- (b) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any direct or indirect loss (including losses of the nature described in sub-clause (a) above) whatsoever or howsoever arising as a result of:
  - (i) a failure of the Customer to adequately insure itself against use of the Goods as further set out in clause 9.3 below; or
  - (ii) the Goods being used, operated, stored or maintained by the Customer or, as the case may be, its customers or clients, other than in accordance with this Contract the User Manual, any guidance provided by the Supplier from time to time or, where applicable, the Maintenance Terms; or
  - (iii) the Customer's or any third parties (including the Customer's customers or clients) wilful damage, negligence, misuse, abnormal storage, maintenance or operating conditions (including, without limitation, where the Goods are subjected to irresponsible, reckless or excessive usage); and
- (c) the Supplier's total liability to the Customer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the Charges actually paid by the Customer and relating to the affected Goods or part of the Goods the subject of the Order.

- 9.3. The Customer acknowledges that the Goods are potentially hazardous or dangerous items which may potentially cause damage, death or injury if not operated, used, stored and maintained properly and responsibly at all times. The Customer acknowledges and accepts that it should take out insurance (including insurances it is legally required to maintain) to insure itself adequately against all risks and matters it considers necessary in connection with the operation, use, storage and maintenance of the Goods. The Supplier does not provide any such insurance or accept any responsibility for providing insurance or for the Customer failing to obtain adequate insurance. The Customer hereby accepts that the responsibility for taking out suitable insurance rests solely with it. The Customer shall produce evidence of any insurance (including insurances it is legally required to maintain) that it maintains from time to time in connection with the operation, use, storage and maintenance of the Goods.

## **10. COMPLIANCE WITH RELEVANT LAWS AND POLICIES**

- 10.1. In performing its obligations under the Contract, the Supplier shall make reasonable efforts to comply with all materially applicable UK laws, statutes, regulations from time to time in force provided that the Supplier shall not be liable under the Contract if, as a result of such compliance, it is in breach of any of its obligations under the Contract.
- 10.2. In making use of the Goods the Customer shall comply with any laws applicable to the territory of its operation or the scope of its use of such Goods as may change from time to time.

## **11. TERMINATION**

- 11.1. Without limiting its other rights or remedies, either party may terminate these Sales Terms upon ten (10) Business Days' written notice to the other party. Termination pursuant to this clause by the Customer shall not affect any Orders which have been accepted by the Supplier prior to termination by the Customer, which shall continue in full force and effect.
- 11.2. Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 10 calendar days after being notified in writing to make such payment. In the event of such termination by the Supplier, the Customer shall be immediately liable to pay the Price and other Charges to the Supplier and the Customer shall be entitled to enforce such payment as a debt due to it from the Customer.
- 11.3. The Supplier may terminate any Order at any time for convenience without any liability to the Customer whatsoever (including, without limitation, for any loss of profit, loss of business, loss of opportunity, loss of or damage to goodwill, loss of data, loss of anticipated savings or commercial advantage, or any indirect or consequential loss of the Customer) and in the event of such termination the Supplier's sole liability and the Customer's sole and exclusive remedy shall be for the Supplier to repay to the Customer any applicable Deposit or other such pre-payment made by the Customer against the Price as set out in that Order.
- 11.4. Subject always to clause 9, termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.

- 11.5. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 12. GENERAL

- 12.1. **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.
- 12.2. **Assignment.** The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract and specifically may transfer this Contract to any person purchasing the business of the Supplier, in whole or in part.
- 12.3. **Confidentiality.**
- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of this Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 12.3(b).
  - (b) Each party may disclose the other party's confidential information:
    - (i) to its employees, officers, representatives 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 12.3; and
    - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
  - (c) 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 this Contract.
- 12.4. **Entire agreement.**
- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 12.5. **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.6. **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of

such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 12.7. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.8. **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office 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 pre-paid first class post or other next working day delivery service, commercial courier, or email.
  - (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 12.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
  - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 12.9. **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 12.10. **Governing law.** This 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.
- 12.11. **Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.