

## **SUPPORT & MAINTENANCE TERMS**

### **1. INTERPRETATION**

- 1.1 These Maintenance Terms shall only apply where the Supplier has, as part of an Order, agreed to supply the Customer with Maintenance Services and the Sales Terms shall continue to apply to any Order for Goods or Parts as defined under the Sales Terms that are supplied alongside Maintenance Services.
- 1.2 These Maintenance Terms do not apply to Goods which are leased or hired under any lease terms entered into in respect of Goods with the Supplier unless they are expressly incorporated by reference in an Order Form.
- 1.3 These Maintenance Terms shall form a separate contract to the Sale Terms that the Units were supplied under, and where any Order under the Sales Terms provides for maintenance then the part of that Order relating to Maintenance Services or Additional Services shall be governed by these Maintenance Terms.
- 1.4 Clause headings shall not affect the interpretation of this Agreement.
- 1.5 References to times and timescales are reference to those times which fall within Business Hours.

### **2. COMMENCEMENT AND DURATION OF THIS AGREEMENT**

- 2.1 This Agreement shall continue in force for the duration of the Customer's use of Goods unless this Agreement is terminated, in which case the Customer may no longer receive or request any Services from the Supplier.
- 2.2 The Supplier shall not be obliged to carry out any services or other work for the Customer unless that is agreed as part of an Order and the mere existence of this Agreement does not compel either party to carry out or order any work or services until an Order is agreed.
- 2.3 The process for placing an Order shall be set out in the Sales Terms or Lease Terms as applicable.

### **3. ANNUAL CHARGES AND MAINTENANCE SERVICES**

- 3.1 The Maintenance Services shall commence on the Maintenance Commencement Date and shall continue, unless and until terminated earlier in accordance with this Agreement, for one (1) calendar year ("**Initial Term**") and shall automatically extend for further consecutive calendar year periods (each an "**Extended Term**") at the end of the Initial Term and at the end of each Extended Term. Either party may give written notice to the other party, not later than thirty (30) days before the end of the Initial Term or the relevant Extended Term, to terminate the

Maintenance Services at the end of the Initial Term or the relevant Extended Term, as the case may be.

- 3.2 The Annual Charge for the Maintenance Services to be provided during the Initial Term shall be paid by the Customer by no later than 5pm on the Business Day prior to the Maintenance Commencement Date in accordance with the provisions of this Agreement. The Supplier shall invoice the Customer for the applicable Annual Charge for the Maintenance Services for each Extended Term prior to the renewal date in each case and the Customer must pay the applicable Annual Charge by no later than 5pm on the date that is five (5) Business Days prior to commencement of the applicable Extended Term, such payment to be made in accordance with the terms of this Agreement.
- 3.3 In addition to the Annual Charge or other Additional Charges payable in the Initial Term or any Extended Term, the Supplier shall have the right to require the Customer to pay for the Supplier's reasonable travel, accommodation and other expenses or disbursements incurred in travelling to any Customer Delivery Location to undertake the Maintenance Services. Any such charges shall be invoiced to, and paid by, the Customer in accordance with the provisions of clause 7 as if such were Additional Charges.
- 3.4 The Supplier shall have no liability or obligation to provide, services, maintenance or otherwise under this Agreement, to the Customer where the Customer does not pay the Annual Charge (or any other Charges) by the relevant due date for payment.
- 3.5 The Supplier offers the Maintenance Services for Units only and this does not apply to any Additional Parts. In addition the Maintenance Services are not provided in respect of any parts added or other alterations or modifications made to the Unit (or any part thereof) by the Customer whether or not such additions, alterations or modifications were made known to or with the approval of the Supplier prior to being undertaken by the Customer.
- 3.6 For the avoidance of any doubt, consumables (including, without limitation, tyres, joystick springs, chains, reflectors, brake discs, brake pads, brake callipers, plastic components (such as mudguards and, seats and chain covers), microswitches, electronic components and lubricants as such list is amended from time to time by the Supplier ("**Consumables**")) and third party items, (being body panels, stickers/vinyls, seat covers, roll bar covers, batteries, batteries chargers ("**Third Party Items**")), are not part of the Units and are not covered by the Maintenance Services and the only warranty applicable to such items is as set out in the Sales Terms or Lease Terms. Any replacement parts (or any services as the Supplier may agree in writing with the Customer to provide from time to time) or Third Party Items, and Consumables, will be charged to the Customer at the Supplier's list price from time to time and any labour associated with the same shall be charged at the Supplier's standard labour rate from time to time. The Supplier shall update

the list of items deemed to be Consumables or Third Party Items from time to time, and the prices in relation thereto, and therefore chargeable to the Customer on supply. This list, and associated prices, shall be made available at all reasonable times, upon request, from the Supplier. If the Supplier makes any changes to the lists of Consumable or Third Party Items that shall not affect any pre-existing arrangement for maintenance which was agreed based upon a different list and that new list shall be taken to apply to all future Orders and/or upon the commencement of any Extended Term.

3.7 The Supplier shall perform the Scheduled Maintenance services during Business Hours on Business Days at the relevant Customer Delivery Location during any maintenance window agreed between the parties from time to time. The Supplier shall use its reasonable endeavours to arrange and confirm with the Customer each Scheduled Maintenance visit at least two (2) Business Days prior to the proposed date or window for undertaking the Scheduled Maintenance.

3.8 In connection with Response Services:

- (a) the Customer must request the Supplier provide Response Services by telephone or email (using such contact details being as provided by the Supplier from time to time);
- (b) the Supplier will use reasonable endeavours to acknowledge this request for Response Services by telephone or email prior to close of business on the next Business Day (**“Response Acknowledgement”**);
- (c) the Supplier will use reasonable commercial endeavours to arrange with the Customer a suitable time for visit to the relevant Customer Delivery Location to take place within 48 hours of close of business on the date of the Response Acknowledgement to perform the Response Services (unless this date would not be a Business Day, in which case it shall be deemed to be the next Business Day unless the Supplier expressly agrees to attend earlier); and
- (d) the Supplier shall undertake the Response Services at the Customer Delivery Location during Business Hours pursuant to Clause 4.3 below.

3.9 If the Supplier fails to undertake Services by a proposed or arranged date, the Customer’s sole remedy and the Supplier’s entire liability shall be limited to rearranging the date to occur within a commercially reasonable time following the missed date where possible.

3.10 As soon as it is reasonably able to do so following undertaking the Maintenance Services or any Response Services, the Supplier will provide the Customer with its report and quotation for those Additional Services, and the associated estimated Additional Charges for undertaking those Additional Services, as the Supplier recommends and/or determines are needed to keep the Units

in Good Working Order or to repair the Units to Good Working Order. All such services shall be Additional Services and shall be undertaken in accordance with the provisions of clauses 4.3 and 4.8.

- 3.11 If the Customer refuses or fails to acknowledge a quotation provided pursuant to clause 3.10, this Agreement shall terminate in relation to the affected Unit automatically and without notice and without liability to either party save as set out in the Contract and other than as set out in clause 10 and the Supplier shall be under no further obligation to provide Maintenance Services in relation to that Unit.
- 3.12 The Supplier may carry out the Services on its own account or it may delegate responsibility to a third-party services provider. The Customer may, with the prior written consent of the Supplier, contract directly with a third-party services provider to provide maintenance services.
- 3.13 Time shall not be of the essence in relation to any of the dates set out or otherwise agreed for Maintenance Services, any Response Services or any other Services.
- 3.14 The Supplier shall procure that its representatives shall, while on site at a Customer Delivery Location, comply with the Customer's reasonable health and safety and security policies provided that these have been brought to the attention of its representatives by the Customer reasonably prior to the relevant visit.
- 3.15 The Supplier shall not be liable to provide any services in respect of Excluded Maintenance unless it expressly agrees to do so in writing by notice to the Customer..

#### 4. **ADDITIONAL SERVICES**

- 4.1 During the Term, the Supplier shall use reasonable endeavours to provide Additional Services where requested by the Customer during normal Business Hours on Business Days at the relevant Customer Delivery Location.
- 4.2 Notwithstanding the other provisions of this clause 4, time shall not be of the essence in relation to the provision of Additional Services.
- 4.3 In relation to Additional Services referred to in clause 3.10, where the quotation provided by the Supplier is accepted by the Customer, the Supplier will use its reasonable endeavours to undertake the Additional Services during the same visit as the initial Maintenance Services are undertaken. If that is not reasonably practicable (or it is not reasonably practicable to do so during Business Hours on that day) the Supplier shall:
- (a) arrange for a further visit to the Customer Delivery Location to take place within an agreed timeframe of the initial visit to complete the repair (or, if repair is then still not possible, to

arrange for the removal of the Units (or part of the Units if applicable) for repair off-site including at the Supplier's premises); or

- (b) arrange for the removal of the Units (or part of the Units if applicable) for repair off-site including at the Supplier's premises; and
- (c) in either case, update the quotation for any further Additional Charges as will be charged or incurred by the Supplier in connection with a further visit or removal of the Unit (or part of the Unit, if applicable).

4.4 Other than in respect of Additional Services provided pursuant to clauses 3.10 and 4.3, where Additional Services are requested by the Customer during the Term:

- (a) the Customer must request the Supplier provide Additional Services by telephone or email or SMS (using such contact details being as provided and approved by the Supplier from time to time);
- (b) the Supplier will use reasonable commercial endeavours to acknowledge this request for Additional Services by telephone or email or SMS (whichever it deems most appropriate) by no later than the end of business on the next Business Day ("**Services Request Acknowledgement**"); and
- (c) the Supplier will use reasonable commercial endeavours to arrange with the Customer a suitable time for an initial visit to the relevant Customer Delivery Location within three (3) Business Days of the date of the Services Request Acknowledgement to inspect the relevant Unit(s) (unless the Supplier expressly agrees to attend sooner).

4.5 As soon as it is reasonably able to do so following the inspection referred to in clause 4.4, the Supplier will provide the Customer with its report and quotation for those Additional Services, and the associated estimated Additional Charges for undertaking those Additional Services, as the Supplier determines are required to repair the Units to Good Working Order.

4.6 If the Customer refuses a quotation provided pursuant to clause 4.5, this Agreement shall terminate in relation to the affected Unit automatically and without notice and without liability to either party save as set out in the Contract and other than as set out in clause 10 and the Supplier shall be under no further obligation to provide Services in relation to that Unit.

4.7 Where the quotation provided by the Supplier pursuant to clause 4.5 is accepted by the Customer, the Supplier will use its reasonable endeavours to undertake the Additional Services during the same visit as the initial inspection referred to in clause 4.4 is undertaken. If the Supplier determines that it is not reasonably practicable to accomplish the required works during Business Hours on that day the Supplier shall:

- (a) arrange for a further visit to the Customer Delivery Location to take place within an agreed timeframe of the initial visit to complete the repair (or, if repair is then still not possible, to arrange for the removal of the Units (or part of the Units if applicable) for repair off-site including at the Supplier's premises); or
- (b) arrange for the removal of the Units (or part of the Units if applicable) for repair off-site including at the Supplier's premises; and
- (c) in either case, update the quotation for any further Additional Charges as will be charged or incurred by the Supplier in connection with a further visit or removal of the Unit (or part of the Unit, if applicable).

4.8 The Supplier shall not be liable for any delay in providing the relevant Additional Services if, in the Supplier's reasonable opinion, it needs to remove the Units (or part of the Units, if applicable) for repair off-site and the Customer unreasonably refuses this request.

4.9 All Additional Charges shall be invoiced by the Supplier and paid for by the Customer in accordance with clause 7.

## 5. **GOODS AND ADDITIONAL PARTS**

5.1 The terms of supply for Parts shall be the Sales Terms and those terms shall govern the supply of all Goods provided alongside the Maintenance Services (save that clause 7 of this Agreement shall apply in respect of the payment of the Additional Charges where applicable for such Parts).

5.2 The Customer may order Additional Parts from the Supplier from time to time under the Sales Terms for whatever reason it wishes, but such Additional Parts do not and shall not form part of any Unit for the purpose of the Maintenance Services and such Additional Parts will not be maintained by the Supplier as part of Scheduled Maintenance or the Response Services except as such Additional Parts are used to completely substitute or replace part of an entire and complete Unit which is itself subject to Maintenance Services. Any request for Services in relation to Additional Parts shall be an Additional Service.

5.3 All Orders and timeframes for performance of Services are subject to the availability of Parts and to the parts and materials used in the manufacture of the Units or Parts remaining available for supply to the Supplier and such not being defective or incapable of being used in the Goods by the Supplier. No timescales can be guaranteed for Third Party Items or any other bespoke or made to measure items produced at the request of the Customer.

## 6. **CUSTOMER'S OBLIGATIONS**

6.1 The Customer shall at all times during the Term:

- (a) use, operate, maintain and store the Units only in accordance with the Sales Terms, this Agreement, the User Manual and any other instructions or recommendations of the Supplier from time to time and with common sense following all applicable health and safety laws and regulations, guidance and best practice recommendations.
- (b) not cause or permit any third party (including any person the Customer permits to use the Units) to cause any damage or defect to any Unit (or Part thereof) as a result of sabotage, wilful damage, negligence, misuse, unauthorised maintenance or sub-optimal operating or storage conditions (including, without limitation, where the Units are subjected to irresponsible, reckless or excessive usage by the Customer);
- (c) permit only competent and authorised persons to use the Units, such persons being as described and identified, and being as briefed, instructed and supervised to use the Units in the manner set out in, the User Manual and any other the instructions and recommendations of the Supplier from time to time;
- (d) notify the Supplier promptly if the Units are discovered to be defective or malfunctioning or have failed or are otherwise not in Good Working Order; and
- (e) keep and use the Units and other relevant parts, including any relevant Third Party Items or Consumables, in the storage and under the usage conditions recommended in the User Manual or otherwise made known to the Customer by the Supplier from time to time.

6.2 The Customer shall ensure that the Supplier's representatives have full and free access to the Units at the Customer Delivery Location and are provided prompt access to any records, and all Customer personnel with knowledge, of the use, operation, maintenance and storage kept by the Customer. The Customer shall ensure that the Supplier's representatives are provided with adequate and safe working spaces and facilities as are reasonably required to enable the Supplier to perform its obligations under this Agreement.

6.3 The Customer shall appoint a manager for the Services who shall have authority to contractually bind the Customer on all matters relating to the Services.

6.4 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

## **7. CHARGES AND PAYMENT**

7.1 The Annual Charges for the Maintenance Services shall be paid by the Customer in accordance with clause 3.2 and the relevant provisions of this clause 7.

- 7.2 In consideration of the performance of the Additional Services, including but not limited to the provision of further Additional Parts such as the Consumables or Third Party Items, the Customer shall pay the Additional Charges to the Supplier in accordance with this clause 7.
- 7.3 The Supplier shall invoice the Customer at the end of each calendar month in arrears for any Additional Charges.
- 7.4 Notwithstanding clause 3.2 as regards the Annual Charge, the Customer shall pay each invoice submitted to it by the Supplier for any Additional Charges within 30 days of the date of the invoice.
- 7.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this Agreement on the due date:
- (a) 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 7.5(a) will accrue each day at 4% a year above the Bank of England's base rate from time to time, or at 4% a year for any period when that base rate is below 0%; and
  - (b) the Supplier may suspend all or part of the Services, and may take action to recover its property from the Customer and/or withhold or prevent access or usage of the same in any way it sees fit, until payment has been made in full.
- 7.6 All sums, including but not limited to any Charges, payable to the Supplier under this Agreement:
- (a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice;
  - (b) shall be paid by the Customer in cleared funds by bank transfer and to the bank account nominated for that purpose by the Supplier by the due date specified for payment; and
  - (c) 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).

## 8. **SUPPLIER STANDARD OF CARE**

- 8.1 The Supplier undertakes to supply the Services using reasonable care and skill.
- 8.2 All other terms and warranties that may be implied by law, except for the warranty set out in clause 8.1 above, are to the fullest extent excluded from this Agreement and the Customer acknowledges and accepts that the limited warranty set out in clause 8.1 is adequate in relation to its use of the Goods and the Services. No warranty is given for any Goods under this Agreement which shall instead be set out in the Sales Terms.



8.3 The Customer acknowledges and agrees that it should avail itself of a suitable insurance policy if the undertaking in clause 8.1 is not appropriate to its business or any purpose for which it intends to use the Goods, such determination to be made at the sole liability and discretion of the Customer.

## 9. **LIMITATION OF LIABILITY**

9.1 The restrictions on liability in this clause 9 apply to every liability arising in connection with the performance of the Services under this Agreement including, but not limited to, liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

9.2 Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

9.3 Subject to clause 9.2 and 9.4, the Supplier's total aggregate liability in respect of all claims, losses, expenses or damages in connection with the performance of the Services under this Agreement shall not exceed the Annual Charge, relating to the affected Services, paid to the Supplier in the year of the Term in which the liability arises, or in relation to any claim regarding Additional Services, the amount of the Additional Charges relating to such Additional Services.

9.4 This clause 9.4 sets out specific heads of excluded loss:

- (a) subject to clause 9.2 the types of loss listed in clause 9.4(b) are wholly excluded by the parties; and
- (b) the following types of loss are wholly excluded:
  - (i) loss of profits;
  - (ii) loss of sales or business;
  - (iii) loss of agreements or contracts;
  - (iv) loss of opportunity or commercial advantage;
  - (v) loss of anticipated savings;

- (vi) loss of use or corruption of software, data or information;
- (vii) loss of or damage to goodwill;
- (viii) indirect or consequential loss;
- (ix) loss arising in relation to Goods (any and all such liability shall be dealt with under the applicable Sales Terms or Lease Terms); and/or
- (x) Losses or any liability whatsoever (including negligence and all other forms of liability legally capable of exclusion under English law) arising from or in relation to use of or damage to Consumables and/or Third Party Items howsoever arising.

9.5 The Supplier has given an undertaking in respect of performance of the Services in clause 8. In view of this commitment, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

9.6 The Supplier may provide guidance alongside the Services and any advice given in the User Manual or other guidance provided shall be provided only for that purpose and is only intended as guidance notwithstanding any specific query raised by the Customer from time to time. The Customer should not place any legal reliance upon the advice, opinion or other input of the Supplier personnel or its third party services providers as to any application of the Goods, Units or the Services generally and the Customer's use of the same is the sole responsibility of the Customer.

## 10. **TERMINATION**

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

- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123

of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986.

10.2 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer if the Supplier reasonably determines that:

- (a) the Customer has sabotaged, wilfully damaged, been negligent in relation to or misused the Units (or any Part or element thereof) generally or as specifically directed in the User Manual, or is otherwise misusing the services provided or to be provided by the Supplier under this Agreement;
- (b) the Units can no longer be maintained in Good Working Order by the provision of Additional Parts, or where the Units are damaged beyond economic repair otherwise than directly through the Supplier's fault; or
- (c) the Units are used in conjunction with Third Party Items which do not comply with the technical requirements specified by the Supplier from time to time (including those set out in the User Manual) or if any Consumable part used by the Customer is generally unsuitable, offensive or morally reprehensible in the Suppliers sole opinion.

10.3 On termination of this Agreement for any reason:

- (a) The Supplier shall be entitled to invoice the Customer all unbilled, but incurred, Charges in connection with the provision of the Services together with any other sums it would have been entitled to charge to the Customer but for the occurrence of termination;
- (b) The Customer shall not be relieved of any obligation of payment; and
- (c) The Supplier shall be entitled to retain, and the Customer shall not be entitled to a refund of, the Annual Charges paid by the Customer notwithstanding that termination occurs part way through a Contract Year, except where the Customer validly terminates this Agreement for a material breach of contract by the Supplier.

## 11. **DEFINED TERMS**

11.1 The following definitions and rules of interpretation apply in this Agreement and the other terms and definitions of the Sales Terms shall apply as though there were set out herein this Agreement except to the extent that this Agreement contradicts the Sales Terms as it relates to Maintenance Services only:

- (a) **Additional Charges:** the charges payable by the Customer in consideration of the provision of any Additional Services or Additional Parts by the Supplier, such charges being calculated in accordance with the Supplier's labour rate and/or parts price list as in force from time to time, and shall include any and all expenses, costs or disbursements incurred by the Supplier in performing the Additional Services (such as logistics costs, travel, or accommodation costs) and any Supplier call/charge out rates as are applicable to Response Services from time to time.
- (b) **Additional Parts:** all spare components which do not form part of a whole functional Unit that is subject to Maintenance Services including but not limited to the Consumables and Third Party Items.
- (c) **Additional Services:** any maintenance and repair services provided by the Supplier to Units at the request of the Customer so as to undertake works (i) recommended by the Supplier following it undertaking Scheduled Maintenance; (ii) recommended by the Supplier following it undertaking a Response Service; and/or (iii) as may be requested to be undertaken by the Customer from time to time in relation to the Unit(s) which do not form part of the Maintenance Services, including, for the avoidance of doubt, undertaking any Excluded Maintenance.
- (d) **Agreement:** shall be a reference to these Maintenance Terms and the applicable provision of Maintenance Services under a specific Order.
- (e) **Annual Charges:** means the Supplier's annual charges for the provision of the Maintenance Services in a year of the Term being (i) for the Initial Term, the charge set out in the Order and (ii) for each Extended Term, the amount the Supplier notifies the Customer prior to the start of the Extended Term as being the charge for the Maintenance Services in that Extended Term.
- (f) **Business Days** means Monday to Friday excluding UK bank holidays and working days between Christmas Eve and the first working day in January when the banks in London are generally open for business (if later) in any year in England;
- (g) **Business Hours:** means 9.00 am to 6.00 pm on a Business Day.
- (h) **Charges:** The charges to be paid for the Services and, where the context requires, shall be taken to include reference to any applicable Additional Charges.
- (i) **Consumables:** has the meaning given to it in clause 3.6.
- (j) **Excluded Causes:**

- (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 Services agreement and later wishes to resume of commence Maintenance Services.
- (k) **Excluded Maintenance:** any maintenance or repair services provided by the Supplier to restore any defect or malfunctioning or failure of a Unit to Good Working Order where the defect or malfunctioning or failure results from or is in any way caused or contributed to by any of the Excluded Causes.
- (l) **Extended Term:** has the meaning given in clause 3.1.
- (m) **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.
- (n) **Good Working Order:** the Units functioning and operating generally in the manner set out or described in the User Manual and/or the samples, drawings, descriptive matter, advice, or advertising produced by the Supplier in relation to the Units and any descriptions or illustrations or other general guidance contained in the Supplier's catalogues or brochures or online.
- (o) **Initial Term:** has the meaning given in clause 3.1.
- (p) **Maintenance Commencement Date:** the date indicated on the Order as being the date from which the Maintenance Services are to commence or, where no such date is provided, the date on which the relevant Units are Delivered under the Sales Terms.
- (q) **Maintenance Services:** means the Scheduled Maintenance and the Response Services.
- (r) **Order or Order Form:** means the commercial document provided by the Supplier which sets out the commercial terms of the arrangement between the parties, referencing and incorporating applicable terms and conditions by reference.
- (s) **Product Description:** means the specification for the relevant Unit as described in the User Manual and in any description expressly set out in an Order Form. In the absence of any express agreement to the contrary the Product Description shall be taken to mean the specification of a Unit as set out on the Supplier's website at the time of Order.

- (t) **Response Services:** means up to the number of responsive servicing visits per Initial Term or Extended Term, as applicable, to the relevant Customer Delivery Location(s) stated on the Order Form, or up to two (2) visits in total during that Initial Term or Extended Term where no number is set out in the Order Form, or as otherwise expressly agreed in writing by the Supplier (for example, within an agreed Order Form or in emergencies by email) to inspect the Unit which is suspected to be no longer in Good Working Order.
- (u) **Scheduled Maintenance:** means up to two (2) pre-arranged and scheduled visits per Initial Term or Extended Term to each of the Customer Delivery Locations stated on the Order Form or as otherwise expressly agreed in writing by the Supplier, conducted at such frequency or interval as is reasonably determined by the Supplier to (i) inspect the Unit; (ii) to test the Unit to ascertain whether it is in Good Working Order; (iii) to grease or oil those relevant and accessible moving parts of the Unit; (iv) to check all nuts and bolts accessible in or on the Unit are appropriately secure and fastened; (v) to make any minor adjustments as may be required without the need for replacement parts to ensure the Unit remains in Good Working Order and (vi) to issue a report to the Customer in the Supplier's standard format with any recommendations as to further works that the Supplier recommends so as to keep the Unit in Good Working Order or which the Supplier considers necessary to ensure the safety features on the Unit remains in place and operable.
- (v) **Services:** means together the Maintenance Services and any Additional Services requested or provided under this Agreement.
- (w) **Term:** the Initial Term together with all Extended Terms.
- (x) **Third Party Items:** as defined in clause 3.6.
- (y) **Unit or Units:** the Unit or Units specified in the Order (which for the avoidance of doubt does not include any (i) Third Party Items as defined above, (ii) Consumables; (iii) stickers/vinyl stickers; (iv) roll bar and seat covers; (v) Additional Parts which have not become part of the Unit and/or (vi) any parts added or other alterations or modifications made to the Units by the Customer whether or not such additions, alterations or modifications were made known to the Supplier prior to being undertaken by the Customer).

## 12. GENERAL

- 12.1 **Force majeure.** Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period

during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for four (4) calendar months, the party not affected may terminate this Agreement by giving 30 days' written notice to the affected party.

12.2 **Assignment and other dealings.** This Agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

12.3 **Entire agreement:**

(a) This Agreement 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 this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

12.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this Agreement 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.

12.5 **Severance**

(a) If any provision or part-provision of this Agreement 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 this Agreement.

(b) If any provision or part-provision of this Agreement is deemed deleted under the clause above the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.6 **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives) save as expressly set out in this Agreement. If the Supplier makes any change to this Agreement which places additional obligations on the Customer which do not arise from changes in law or regulation (including health and safety best practice) then the Customer must inform the Supplier within 30 days of that change and the Supplier shall either allow the Customer to terminate the affected part of this Agreement or it shall propose an



alternative resolution to the Customer which does not result in a substantial detriment to the Customer.

### **12.7 Third Party Rights**

- (a) This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- (b) The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

12.8 **Conflict.** If there is an inconsistency between any of the provisions in the main body of this Agreement, the provisions in the main body of this Agreement shall prevail.

12.9 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### **12.10 Notices**

- (a) Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by email to the address specified in the Order or as otherwise notified by the Supplier to the Customer from time to time.
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) 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; and
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, business hours means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 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.

- 12.11 **Governing law.** This Agreement 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.
- 12.12 **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 this Agreement or its subject matter or formation.