

SALES TERMS AND CONDITIONS

These Sales Terms and Conditions (these “Sales Terms”) apply to each sale of Goods, including Units, Parts and Additional Parts, to any Customer by Aqualand Industries (US), Inc. (“Supplier”).

EXECUTIVE SUMMARY/CERTAIN TERMS

Certain Material Terms of the Contract as set out herein are summarized as follows:

Sections 2.2-2.3: Purchase Orders/Confirmations. Customer’s Orders are not final until written acceptance by Supplier.

Sections 2.5-2.6: Payment of Deposit. Customer’s payment of Deposit (or payment in full for Bespoke Goods) due upon receipt of written acceptance of Order from Supplier.

Section 2.7: Supplier’s receipt of Deposit binds Order.

Sections 2.8-2.11 and 12: Cancellation of Orders. Orders are final after Supplier receipt of Deposit. Cancellation by Customer after that time prohibited.

Section 4.1: Shipment and Delivery. Customer must elect whether Supplier shall management shipment. If Customer designates Supplier, full cost of transport must be included in Deposit. Customer responsible at all times for risk of loss and insurance *Ex Works* from the manufacturing facility in the UK.

Section 9.3: Payment of the Price. Full Price and all Costs due and owing five Business Days following the date on which Supplier provides notice to Customer that the Goods are available for pick up or shipment.

Section 12: Termination of Orders. Termination of Order by Customer after Acceptance and prior to Delivery makes Customer liable for all Charges including Price.

The foregoing summary is not intended and shall not operate as a modification or supersedure of the terms and conditions set forth herein, and is intended merely for customer’s convenience.

1. INTERPRETATION

- 1.1 These Sales Terms apply to each purchase by Customer of Units or Parts and Additional Parts. 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 Section 2.6 of these Sales Terms.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in Austin, Texas 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, storage, 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.

Consumable(s): includes, 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 and other applicable items specified by the Supplier as the same as such list is amended from time to time by the Supplier

Contract: Customer's Order for the sale and purchase of specific Goods, these Sales Terms and the User Manual together constitute a binding contract between Customer and Supplier.

Customer Delivery Location: the address for delivery of the Goods as set out in the Order.

Deposit: means, as the case may be, (i) that portion 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, including Customer's shipping charges, such Deposit being as specified on an Order or (ii) where Section 2.6 applies, the full Price and all other Charges for Bespoke Goods.

Delivery: means the Supplier making the Goods available for collection at the UK manufacture location (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 defects in, damage to or performance failures of the Goods (each a "Claim") that are not covered by Supplier's Warranty. Excluded Causes are Claims arising from:

- (i) incorporating into the Units goods or materials not supplied or approved in writing by 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 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 Supplier;
- (iv) the Claim arises during transit of the Goods 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 Claim arises due to the use of a Unit in breach of the terms of this Agreement, the Sales Terms or the User Manual;
- (vi) the Claim 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) the Claim arises due to 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 Claim 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) the Claim arises due to 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) the Claim arises 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) the Claim arises as a result of a Force Majeure Event; or

- (xii) the Claim arises as a result of a lack of or gap or delay in the application of maintenance to the Units and Goods (irrespective of whether such maintenance is provided by the Supplier or by the Customer or others with the prior approval of the Supplier.

Force Majeure Event: events, circumstances or causes beyond a party's reasonable control, including without limitation inclement weather, pandemic, epidemic, lockdown, port closures, government decrees, labor unrest or work stoppage, or actions taken by any governmental or quasi-governmental agency.

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, subject to these Sales Terms.

Highest Legal Rate of Interest: means the highest non-usurious rate of interest chargeable to Customer by Supplier as announced by the Office of the Texas Consumer Credit Commissioner from time to time.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks 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.

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.

Person: means any natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

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

Third Party Items: means stickers/vinyls, seat covers, roll bar covers, batteries and batteries chargers used in connection with, or supplied with, Units.

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.

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.

1.3 Interpretation:

- (a) references to times are all to Central Standard (or if applicable daylight) time in the United States.
- (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 Section 12 below. Such contract shall incorporate by reference these Sales Terms and the User Manual.
- 2.2 (i) A purchase of Goods is initiated by the Customer's request to the Supplier to provide a draft Order for Goods; (ii) upon receipt of the Customer's request, Supplier shall provide Customer with a draft Order which shall include pricing for Goods, estimated shipping charges, custom duties, and other applicable charges and expenses; (iii) Customer shall promptly (and in any event within seven (7) 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 alternatively 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 seven (7) 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 Section 2.2 shall be repeated until a final Order is issued by the Supplier and signed and returned to Supplier 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 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. Supplier liability and Customer redress in such circumstances being as provided in this Section 2 and Sections 12.2 and 12.3.
- 2.5 Subject to Section 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 included in Supplier's production schedule 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 being confirmed in writing by the Supplier to the Customer after payment and receipt of the Deposit, 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 Supplier has received Customer's Deposit, 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 or attempts to cancel an Order prior to Delivery, delays Delivery or fails to take Delivery, then, subject to Section 12.1 of these Sales Terms, the amount of the Deposit shall be forfeit to Supplier, and Customer shall immediately pay to Supplier (i) the amount of the Price as set forth in the confirmed Order, over and above the amount of the Deposit; and (ii) all other costs and expenses incurred by Supplier as a result of Customer's cancellation or refusal to accept delivery, including storage charges; transportation costs to or from Supplier's point of origin, Supplier's insurance costs and an administrative fee in an amount equal to ten percent (10%) of such costs and expenses.
- 2.10 Without limiting any other rights or remedies the Supplier may have (including under the provisions of Section 2.9), where a Customer seeks to delay Delivery or the manufacture of its ordered Goods, Supplier shall be entitled at Supplier's sole discretion 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 schedule 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 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) to take into account any increases in costs relating to the following:
- (a) Foreign currency exchange rates;
 - (b) Supply chain costs;
 - (c) Delivery, shipping, logistics or similar and associated costs; and
 - (d) regulatory changes.
- 2.12 Where the Supplier notifies the Customer of a Price increase that falls outside the scope of Section 2.11 above, or where such Price increase represents an increase of more than 10% of the total Price, the Customer shall have the right to consent to such Price increase in writing or 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 that have not, as of the date of termination, been paid to Supplier's vendors/suppliers or other creditors in the course of business shall be repaid to the Customer.

2.13 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.

2.14 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 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 Supplier does not warrant that the Goods shall 100% conform to such descriptions or illustrations. Supplier shall not be liable for any non-material modification of or departure from such descriptions or illustrations however arising, nor shall any such modification or departure in any way invalidate the Contract between the Supplier and the Customer in respect of the Goods. Customer shall have the right to consent in writing to material modifications of the illustrated specifications for the Goods.

3.2 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.

3.3 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. Supplier shall provide Customer written notice of any such required modifications for the specifications of the goods.

3.4 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 Section 3.4 shall survive termination of the Contract.

4. DELIVERY/PAYMENT OF THE PRICE

- 4.1 Customer shall designate in its Order whether Customer will manage the transport of the Goods from their point of manufacture in the United Kingdom to the Customer Delivery Location. If Customer elects to manage transport, the Price in the final accepted Order shall not include transport related costs, and Customer shall be solely responsible for all costs associated with transport and delivery of the Goods to the Customer Delivery Location, including any customs duties and tariffs. Absent such election by Customer, the Customer's Deposit included in the final accepted Order shall include all costs associated with Supplier's delivery of the Goods to the Customer Delivery Location other than any customs duties and tariffs which are stated on the Order to not be included in the Price or Charges. In either instance, the Goods will not be shipped or made available for collection until receipt by the Supplier of the full amount of the Price and any other Charges. In either instance, the Goods will only be delivered when Delivery has taken place.
- 4.2 The Supplier recommends that the Customer is present at Delivery to inspect the Goods prior to onward transport, if any, by Customer.
- 4.3 Where Customer elects to have Supplier arrange shipment of the Goods to a Customer Delivery Location, title of the Goods shall pass to Customer *Ex Works*. i.e. upon Delivery and pursuant to Section 6.1 below. Supplier shall provide Customer with all relevant information regarding the transport of the goods, including the contact information for the carrier and the estimate date of arrival of the Goods at the Customer Delivery Location. The Customer assumes all cost, expense and sole risk of loss of the Goods during transport to the Customer Delivery Location. The Customer acknowledges and agrees that the Supplier shall not be liable to Customer whatsoever and howsoever arising from any loss or damage to the Goods during transit and that the cost charged to the Customer for such transport shall not take into account any insurance.
- 4.4 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 in transit to its Customer Delivery Location.
- 4.5 Supplier's estimate of the date of the Goods arrival at the Customer Delivery Location 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 Section 4.6 below.
- 4.6 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.

- 4.7 In the event that Customer has elected to be responsible for the shipment of the Goods, Supplier shall provide Customer with reasonable advanced written notice of the date/time that the Goods will be available *Ex. Works* (an “Availability Notice”). If Customer has not taken delivery of or collected the Goods within ten (10) Business Days following Customer’s receipt of the Availability Notice, 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.
- 4.8 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.
- 4.9 The Supplier may provide multiple Orders and/or Goods simultaneously or it may deliver against individual Orders and/or Goods by installments, which may be invoiced and paid for separately. The Customer may not cancel an installment because of any delay in delivery or defect in another installment.

5. SUPPLIER WARRANTY

- 5.1 Except for Third Party Items and Consumables as set out in Section 5.2 below, and subject to Section 5.4, the Supplier warrants that, for a period of six (6) months from the Delivery Date (the “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;
 - (b) be free from material defects in design, materials and workmanship; and
 - (c) at the time of Delivery, be free and clear of all liens and encumbrances arising through Supplier, but not otherwise.

The foregoing warranty does not cover Claims that arise from Excluded Causes as such term is defined in Section 1.2 above. The Customer has no liability for Claims that arise from Excluded Causes.

- 5.2 Notwithstanding Section 5.1 the Supplier does not provide any warranty in relation to Consumables or Third Party Items. Upon receipt of a Claim relating to Consumables or Third Party Items, Supplier at its sole discretion may (a) sell Customer replacement Consumables and/or Third Party items, only

to the extent that the same are in Supplier's current inventory, at the prices set forth in Supplier's price list; or (b) refer the Customer to the relevant third party supplier of that Consumable or Third Party Item. Consumables and/or Third Party Items supplied to Customer pursuant to this Section 5.2 are not warranted by Supplier.

5.3 Subject to Section 5.4, 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 Section 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 Customer's cost,

upon confirmation of a valid warranty claim, the Supplier shall, at its sole option and commercial discretion (i) provide Customer with replacement Parts, if any, that have failed during the Warranty Period (and recommend to Customer a qualified local service vendor to install same if Customer lacks personnel capable of such installation); (ii) repair such Goods either on Customer's location or at a qualified local vendor; (iii) repair such Goods at the UK manufacturing location (with Customer being responsible for all costs associated with the shipping of the Goods to and from such location); (iv) replace any Goods that are found to be defective, or (v) 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 Section 5.1 if Customer's Claim arises as a result of Excluded Causes.

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 Section 5.1 is as set out in this Section 5.

5.6 The terms of the Contract shall apply to any repaired or replacement Goods supplied by the Supplier, however, the warranty set out in Section 5.1 shall not be deemed to be extended or renewed in relation to resupplied Goods.

SUPPLIER DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, RELATING TO THE GOODS, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 5 OF THESE SALES TERMS.

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

- 6.1 Title to the Goods and the risk of loss of same shall pass to the Customer *Ex. Works* at the place and time of Delivery regardless of any onward transport provided or arranged by Customer or the Supplier.
- 6.2 Goods shall not be made available for Delivery to Customer until Supplier has received payment in full (in cash or cleared funds) for all Charges relating to the Goods including the Price. 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 Supplier's Intellectual Property Rights are excluded from any sale of Goods, and shall remain the property of the Supplier or its third-party licensors where appropriate. The Customer shall not interfere with or otherwise obscure any copyright or similar intellectual property rights notices attached to the Goods.

7. **INTELLECTUAL PROPERTY**

- 7.1 Customer agrees that it shall take no action to reverse engineer, duplicate, copy or self-manufacture the Goods.
- 7.2 To the extent that the User Manual provided to Customer by Supplier discloses any of Supplier's proprietary design specifications of the Goods, or other confidential information, Customer agrees that it shall not disclose any such proprietary information to any Person except upon Supplier's advance written consent.
- 7.3 Customer shall promptly provide Supplier with written notice in the event that Customer is notified by any Person that the Goods infringe upon the intellectual property rights of any third-party.
- 7.4 Supplier indemnifies Customer and agrees to hold Customer harmless from any claim of infringement lodged by any third party against Customer based on the design and specifications of the Goods, except to the extent that Customer has made unauthorized modifications to the Goods that have been the producing cause of such infringement claim.

8. **PRODUCT RECALL**

- 8.1 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.
- 8.2 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.

9. PRICE AND PAYMENT

- 9.1 The Customer shall pay the Charges in accordance with Section 4 and this Section 9.
- 9.2 The Price of the Goods set forth in the final Order (i) 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, and (ii) is subject to change upon notice to Customer subject to the terms and provisions of these Sales Terms. The Price and all other Charges set forth in the final Order do not include sales tax, if applicable, and Customer shall be liable for payment of applicable sales tax as set forth in Supplier's invoice.
- 9.3 The Supplier may invoice the Customer for the Price (taking into account any Deposit or other sum paid prior to Delivery pursuant to Section 9.2 on, or at any time after, it confirms acceptance of the Order to the Customer and (subject to Section 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 the close of business on the date that is two (2) Business Days prior to (and including) the date on which Supplier makes the Goods available to Customer for pickup or shipment. Payment shall be made to the bank account nominated in writing by the Supplier.
- 9.4 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 Section 12 of these Sales Terms:
- (a) the Customer shall pay interest on the overdue amount at the rate that is the lower of (i) 4% per annum above HSBC Bank PLC's base rate in effect from from time to time, or (ii) the Highest Legal Rate of Interest. 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.
 - (c) Supplier shall have the right to commence legal action to collect any amounts due and owing by Customer under any Contract. In the event that Supplier is forced to commence legal action, Customer agrees to be legally liable for, and to reimburse Supplier on demand, Supplier's reasonable and necessary attorneys' fees, costs of court and reasonable expenses incurred in connection with such legal action.
- 9.5 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.

10. LIMITATION OF LIABILITY

10.1 Customer agrees to indemnify supplier and hold Supplier and its officers, directors, members, managers, employees, contractors and insurers (the “Supplier Indemnified Parties”) harmless from all claims, liabilities, causes of action, expenses and charges arising from Customer’s purchase and/or use of the Goods, including without limitation claims arising from Customer’s representation of non-infringement regarding Bespoke Goods set forth in Section 3.4 above, excluding, however (i) valid warranty claims asserted by Customer in the manner and within the time set forth in these Sales Terms, and (ii) claims arising as a result of:

- (a) Supplier’s gross negligence or willful misconduct;
- (b) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability; and
- (c) any breach by Supplier of the material terms of its Contract with Customer.

10.2 Subject to Section 10.1:

- (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, 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 Section 2.10) or any exemplary or punitive damages;
- (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-Section (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 Section 10.3 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
 - (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);

- (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.
- (d) Customer hereby waives and releases any causes of action that it has or may have in the future based on any alleged false or misleading sales practice, inaccurate or misleading product information, deceptive advertising and/or any misrepresentation of the Goods' qualities, characteristics and uses, including without limitation claims under the Texas Deceptive Trade Practices Act, *Texas Business and Commerce Code* Section 17.50 et. seq. and claims under consumer protection and/or deceptive trade practices statutes and regulations in the jurisdictions in which Customer utilizes the Goods.
- (e) The Parties agree that the individual Supplier Indemnified Parties (other than Supplier itself) shall not be liable in any manner to Customer for any claims or damages, asserted by Customer in connection with the purchase and/or operation of the Goods except to the extent that such individual has agreed in writing to be responsible for any obligation of Supplier.

10.3 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 to Supplier, upon Supplier's written request, certificate(s) of insurance or other documentation evidencing the 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.

11. COMPLIANCE WITH RELEVANT LAWS AND POLICIES

- 11.1 In performing its obligations under the Contract, the Supplier shall make reasonable efforts to comply with all materially applicable laws, statutes, regulations from time to time applicable to the sale of the Goods.
- 11.2 In making use of the Goods, the Customer shall comply with all laws and regulations relating to the safe operation, maintenance, storage and transport of the Goods applicable in the jurisdiction where Customer utilizes the Goods.

12. TERMINATION

- 12.1 Customer shall have the right to terminate any Order at any time prior to Supplier's receipt of the Deposit and/or the deployment of funds for parts and materials pursuant to Section 2.12 above. In the event that Customer terminates an Order at any time following payment of the Deposit, Customer shall be liable to Supplier for such amounts and in such manner set out in Section 2 and such rights and remedies of the Supplier shall be in addition to any other right or remedy Supplier may have against Customer for any losses it may suffer or incur as a result of, or in connection with, the Supplier's termination.
- 12.2 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 Supplier and the Customer shall be entitled to enforce such payment as a debt due to it from the Customer.
- 12.3 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.
- 12.4 Subject to the other provisions of these Sales Terms, termination of the Contract shall not affect any of the Parties' rights and remedies that have accrued as of the date of termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.
- 12.5 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.

13. GENERAL

- 13.1 **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.
- 13.2 **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 any Contract and specifically may

transfer this Contract to any person purchasing the business of the Supplier, in whole or in part. The Contract shall not be assignable by Customer absent Supplier's advance written consent.

13.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time during a Contract, and for a period of two years after termination of any 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 Section 13.3(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 Section 13.3; 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 at Contract.

13.4 Entire agreement.

- (a) Each Contract between Supplier and Customer constitutes the entire agreement between the parties and shall supersede and extinguish all previous agreements, promises, assurances, negotiations, quotes, 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 these Sales Terms. Customer agrees that Supplier's statements regarding pricing, shipping cost, time of delivery and similar terms in a Contract are subject to change in the manner and upon the grounds set forth in these Sales Terms.

13.5 Amendment. No amendment to these Sales Terms or any Contract shall be effective unless it is in writing and signed by the duly authorized representatives of the parties (or their authorised representatives).

- 13.6 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under these Sales Terms, in any 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.
- 13.7 **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 Section shall not affect the validity and enforceability of the rest of the Contract.
- 13.8 **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 Section, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email to the email addresses of the account person responsible for the Goods at respectively the Supplier and Customer.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Section 13.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the fifth (5) 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 Section shall not apply to the service of any proceedings or other documents in any legal action.
- 13.9 **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 laws of the State of Texas.
- 13.10 **Jurisdiction.** Each party irrevocably agrees that the state and federal district courts residing in Travis County, Texas shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with any Contract or its subject matter or formation.