

SPTS TECHNOLOGIES LTD

STANDARD TERMS AND CONDITIONS OF SALE

- 1. TERMS OF SALE.** The Buyer's written acceptance of the Seller's Quotation (being, the quotation signed by the Seller and the Buyer to which these terms and conditions of sale are annexed) constitutes an offer by the Buyer to purchase the equipment, parts, and materials (the "**Equipment**") and services covered thereby (the "**Services**") described in the Seller's Quotation upon these terms and conditions (the "**Terms and Conditions**"). The Buyer's offer is only accepted when the Seller issues a written confirmation of the order, at which point the contract shall come into existence between the Buyer and Seller for the sale and purchase of the Equipment and Services (the "**Contract**").

Any terms or conditions of the Buyer's order or the Buyer's other purchase documents and correspondences inconsistent with or in addition to the Contract shall not be binding on the Seller. No waiver, alteration, or modification of any of these Terms and Conditions or the Contract shall be binding on the Seller unless made in writing and signed by an authorised representative of Seller.

- 2. TERMS OF SHIPMENT.** All shipments are made FCA Factory Incoterms® 2010 as issued by the International Chamber of Commerce. Shipments are made in a commercially reasonable manner as determined by the Seller. Subject to **clause 17**, title and risk of loss or damage shall pass to the Buyer at the Seller's Factory (as such term is defined in the Seller's Quotation). Partial and/or instalment shipments are authorised and shall be paid for when due. Shipment schedules are approximate and the Seller will use commercially reasonable efforts to complete shipment as indicated. Sub-assemblies for the Equipment may be shipped from different sites and integrated during installation.
- 3. PAYMENT.** Payments are due in U.S. Dollars unless the parties specifically agree otherwise in writing. The Seller reserves the right to require an irrevocable letter of credit from a bank that it designates.
- 4. PRICES.** All prices are exclusive of sales, use, import, value added tax (VAT), or similar taxes or duties, whether imposed currently or in the future. Such taxes shall be borne by the Buyer in addition to the prices quoted or invoiced. In the event the Seller is required to pay any such taxes, the Buyer shall reimburse the Seller those taxes.
- 5. CHANGES.** The Seller reserves the right to modify or change the Equipment in whole or in part at any time prior to the delivery thereof in order to include therein electrical or mechanical refinements deemed appropriate by the Seller, but without incurring any liability to modify or change any product previously delivered or to supply new products in accordance with earlier specifications. If the Buyer requests changes in the configuration of the Equipment, subject to the Seller's acceptance, the Buyer shall pay for the reasonable cost for rework and rescheduling of the Equipment. Any deleted feature, option, or accessory shall be subject to the cancellation fee shown in **clause 11**. All requested changes must be made by the Buyer in writing to the Seller. If the Seller accepts the requested changes, the Seller shall inform the Buyer of the new delivery date and additional costs via a new written order confirmation.
- 6. DELIVERY DELAY.** The Buyer can delay delivery of the Equipment one-time only up to thirty (30) days beyond the scheduled shipment date by written notice to the Seller provided that written notice of the Buyer's delay request is received by the Seller at least sixty (60) days prior to the scheduled shipment date. For the purpose of payment of the purchase price, if the Buyer-requested delay exceeds thirty (30) days or moves the requested ship date out of the Seller's fiscal quarter or if the Buyer's request for delay is received by the Seller less than sixty (60) days prior to the scheduled shipment date, shipment shall be deemed to have occurred on the scheduled shipment date and the Site Acceptance Date as defined in the Customer Acceptance Plan shall be deemed to have occurred thirty (30) days thereafter.

The Buyer shall be responsible for any and all costs associated with any such delay including storage, maintenance, and retesting costs.

7. **INSPECTION.** The Buyer shall visually examine the Equipment promptly upon receipt thereof. Within ten (10) days of such receipt, the Buyer shall notify the Seller in writing of any complaint that the Buyer may have concerning the Equipment delivered hereunder, including, but not limited to, any claimed shortages, defects, delivery errors, or any other problems.
8. **PRE-INSTALLATION.** The Buyer is responsible for the following items: ensure the site's compatibility with the Seller's shipment crates; provide environmentally adequate storage space for the Equipment upon its arrival at the Buyer's facility prior to installation; provide access to the facility to the Seller's employees for pre-installation surveys, unpacking, and installation of each system; make available the Buyer's personnel in sufficient numbers and of adequate capabilities on site to assist the Seller during pre-installation, unpacking, and installation; use the Seller approved equipment, rigging, or other services to transport the Equipment, either assembled or in parts, to the place of installation; establish and maintain additional site conditions as indicated pursuant to the Seller's then-current installation requirements; and provide any other support or assistance as requested by the Seller (the "**Pre-Installation Conditions**"). The Seller shall be under no obligation to install the Equipment unless the Buyer complies with the Pre-Installation Conditions. If, as a result of the Buyer's failure to comply with the Pre-Installation Conditions, the Seller is unable to complete installation as scheduled, the Buyer shall compensate the Seller for any additional costs or expenses incurred, including the cost of subsequent or extended visits necessary to complete the installation.
9. **INSTALLATION.** The Equipment shall be installed by the Seller with reasonable skill and expertise, provided that all the Pre-Installation Conditions stated in **clause 8** have been met by the Buyer. In the event installation cannot be completed within thirty (30) days of the delivery of the Equipment due to Buyer-caused delays, including, but not limited to, the Buyer's failure to comply with the Pre-Installation Conditions, installation shall be deemed complete and the Final Acceptance Test (FAT) as defined in **clause 10** shall be deemed satisfied and met thirty (30) days after shipment. Any unpaid balance of the purchase price shall thereupon become due, and the warranty will start.
10. **ACCEPTANCE TEST.** For the purposes of this clause, "**Customer Acceptance Plan**" means the customer acceptance plan agreed between the Buyer and the Seller and annexed to the Quotation.

Notwithstanding anything to the contrary in these Terms and Conditions, the final acceptance date shall be the earlier of:

- such time as the Equipment meets the acceptance criteria documented in the Customer Acceptance Plan (the "**Final Acceptance Test**") including any mutually-agreed specifications referenced therein;
- such time the Buyer uses the Equipment for any purpose including production or Research and Development (R&D) prior to fulfilment of the acceptance criteria documented in the Customer Acceptance Plan including any mutually-agreed specifications referenced therein;
- ninety (90) days from shipment if acceptance or use has been delayed through no fault of the Seller.

Any unpaid balance of the purchase price shall become due and payable within ten (10) days after the final acceptance date. Minor deviations from specifications or acceptance criteria that do not substantially affect the Buyer's ability to effectively use the Equipment shall not be grounds for delayed acceptance, but shall be remedied under the terms of the applicable warranty.

- 11. CANCELLATION.** The Buyer agrees that in the event of cancellation by the Buyer of the order or any part thereof prior to the scheduled shipment date, the Buyer shall pay the Seller as liquidated damages, and not as penalty, a percentage of the price for such items cancelled as based on the following schedule.

≥151 days before scheduled shipment date	10% of the purchase price;
150-121 days before scheduled shipment date	20% of the purchase price;
120-90 days before scheduled shipment date	30% of the purchase price;
60-89 days before scheduled shipment date	40% of the purchase price;
30-59 days before scheduled shipment date	50% of the purchase price;
≤29 days before scheduled shipment date	60% of the purchase price.

This clause shall not be deemed to create any right of cancellation in the Buyer and only reflects the parties' agreement as to the reasonable and proportionate damages to which the Seller shall be entitled in the event of cancellation by the Buyer to protect the Seller's legitimate interest in performance, taking into account relevant factors, including, without limitation, the customised nature of the Equipment and the limited number of potential customers therefor.

- 12. RETURNS.** The Buyer shall have no right to return the Equipment or any part thereof, and no Equipment may be returned without the Seller's written consent, which may be withheld at the Seller's sole discretion. The Seller assumes no responsibility for unauthorised returns. All expenses for returned Equipment shall be borne by the Buyer.

13. WARRANTY.

- 13.1. The Seller warrants that for the warranty period the Equipment used under normal operating conditions shall be free of defects in materials and workmanship and that the Services shall be performed with reasonable skill and expertise. The warranty period for the Equipment will be defined in the Seller's Quotation. If no warranty period is defined in the Seller's Quotation, the following warranty periods will apply.

New Equipment	twelve (12) months from process acceptance. If process acceptance is delayed past ninety (90) days from shipment through no fault of SPTS, the warranty will start ninety (90) days from shipment.
Refurbished Equipment	six (6) months from the final acceptance date. If process acceptance is delayed past ninety (90) days from shipment through no fault of SPTS, the warranty will start ninety (90) days from shipment.
Upgrade Kits and Spare Parts	ninety (90) days from shipment
Consumables	fit for use at shipment. Notification of defective consumables must be made within ten (10) days of shipment and prior to installation in the Equipment.

- 13.2. Equipment sold hereunder may include additional warranty terms and conditions for systems and components. Such additional warranty terms and conditions shall be stated in the body of the Seller's Quotation.
- 13.3. The warranty provided by this clause is extended to the first end user and is not transferable to subsequent users and is conditioned upon the Buyer maintaining and operating the Equipment in accordance with the Seller's then-current specifications. If, after notice from the Buyer substantiated by appropriate Seller tests and inspections, the Seller finds the Equipment or any part of it to have any defect covered by this warranty, the Seller will, at its sole discretion, either repair the same or install a replacement.

- 13.4. Any parts removed from the Equipment for replacement will be retained by the Seller. Warranty service shall be provided during normal business hours – Monday through Friday, 8:00 a.m. to 5:00 p.m. Repair or, at the Seller's option, replacement of any defective Equipment shall be the exclusive remedy under the warranty, and liability for the warranty made herein shall in no event exceed the cost of correcting defects or replacing the defective item.
- 13.5. With respect to any Service performed by the Seller, the Seller's sole liability for any defect therein shall be to perform again such services at the Seller's expense. Parts furnished in warranty services shall be new or refurbished, at the option of the Seller, but shall be comparable to new parts.
- 13.6. The foregoing warranty is exclusive of all other warranties, whether written, oral, implied or by trade usage, in connection with the design, sale, installation, service, or any use of the equipment or any part of the equipment including any warranty of merchantability or fitness for a particular purpose.
- 13.7. Without limiting the generality of the foregoing, the Seller's warranty does not cover and no warranty is made with respect to:
- failures discovered, but not reported within the warranty period;
 - accessories, attachments, or other devices not furnished by the Seller;
 - failure of the Equipment that in the Seller's judgment is caused by other than normal wear and tear or by conditions not controllable by the Seller, including, but not limited to:
 - attempts by other than Seller personnel to install, modify, repair, or maintain the Equipment without the Seller's specific, prior written authorisation;
 - improper use, misuse, or lack of use of the Equipment;
 - installation of unapproved software;
 - fluctuations of line voltage, current, vacuum, gas, humidity, temperature, or other factors that exceed those limits as indicated in the then-current Pre-Installation Conditions;
 - damage by fire, water, vandalism, riots, civil unrest, or Acts of God;
 - strikes, lockouts, embargoes, insurrection, inability to obtain shipping space or materials, or governmental acts including import/export restrictions, or limitations;
 - damage in shipment or otherwise not caused by faulty packing or crating, whether or not Seller selected means of shipment and/or carrier;
 - such parts that by their nature have a life expectancy shorter than the applicable warranty period under normal use in accordance with the Seller's specifications, commonly referred to as "consumable".
- 13.8. As a condition of the Seller's obligations under this warranty, the Buyer shall:
- notify the Seller immediately of any claimed failure of the Equipment;
 - upon request, provide raw data substantiating the claimed failure;
 - allow the Seller's service personnel prompt, full, and free access to the Equipment and the premises

on which it is located;

- not impose a waiver of liability or other restriction on the Seller's service personnel as a site access requirement;
- ensure that least one (1) of the Buyer's employees shall be on the premises during the performance by Seller of any warranty service;
- provide free of charge to the Seller service personnel performing warranty service a reasonable and secure space for documentation, tools, test equipment, etc.; and
- do any other thing which is specified in the Seller's Quotation.

Furthermore, the Buyer agrees to permit the Seller to implement remote, automatic means of collecting data from the Equipment. Such data may relate to the use of the Equipment, including tool and process parameters, environmental conditions, and interconnections with other equipment. The Seller will use such data solely for purposes of fulfilling its obligations under this **clause 13**, supporting the use of the Equipment, providing maintenance and repair services, analysing Equipment problems, analysing performance, providing preventive maintenance monitoring, developing recommendations for use of the Equipment, performing tuning and performance enhancement, developing new features, and improving performance. Such data shall be deemed Buyer's Confidential Information, and the Seller will protect the data in accordance with **clause 20**. The Buyer agrees to permit the Seller to continue the data collection processes for so long as it owns or operates the Equipment.

14. LIMITATION OF LIABILITY.

- 14.1. The extent of the Seller's liability for damages of any nature to the Buyer or any other entity whether in contract, tort (including negligence and strict liability), or otherwise shall in no case exceed the price allocable to Service, Equipment, or part thereof that gives rise to the claim or, where it is not possible to allocate such price, the Total System Price as specified in the Seller's Quotation.
- 14.2. In no event will the Seller be liable to the Buyer, whether in contract, tort (including negligence), for breach of statutory duty or otherwise, arising under or in connection with the Contract for any loss of production, loss of sales or business, loss of anticipated savings, loss of profits, loss of use, business interruption, loss of use or corruption of software, data or information, loss of or damage to goodwill, cost of cover, or for any special, indirect, incidental, consequential, or contingent damages howsoever caused including any such damages caused in connection with, arising out of, or resulting from the provision of the Services or from the design, manufacture, sale, delivery, resale, inspection, repair, maintenance, operation, or use of any Equipment or parts thereof, even if the Seller has been advised of the possibility of such damages.
- 14.3. Without prejudice to the generality of **clause 14.2**, any liability for direct or indirect damage or loss, such as, but not limited to, loss of profits and any claims by third parties that may arise from non-performance by the Buyer of its contractual obligations or from use or cessation of use of the products or components supplied by the Seller is expressly excluded.
- 14.4. Nothing in these Terms and Conditions limits any liability which cannot legally be limited, including but not limited to, liability for:
 - 14.4.1. death or personal injury caused by negligence;
 - 14.4.2. fraud or fraudulent misrepresentation;

- 14.4.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- 14.4.4. defective products under the Consumer Protection Act 1987.

15. DOCUMENTATION. Upon request, the Seller shall furnish with each Equipment one (1) copy of the manual as stated in the Seller's Quotation from which the Equipment was purchased. The Buyer shall not make copies of such documents for any purpose other than for its own internal use, and all such copies shall bear any Seller copyright notice that appears on the original. The Seller's manuals and other documentation, including, but not limited to, training and sales presentations, shall be treated by the Buyer as Seller confidential information and shall be protected by the Buyer in accordance with **clause 20**.

16. DEFAULT IN PAYMENT. In addition to other rights remedies provided by law, failure by the Buyer to make any payment promptly when due shall be a default by Buyer and shall entitle Seller, at its sole discretion, to:

- 16.1. collect interest on overdue amounts at the rate of 3% per annum above Barclays Bank PLC's base rate from time to time
- 16.2. repossess any Equipment for which any payment or partial payment has not been made in full when due; and/or
- 16.3. suspend warranty service and post warranty service with respect to the Buyer and require the Buyer to reimburse the Seller for any and all collection fees incurred.

In the event the Buyer fails to make payment when due in accordance with the Contract, Seller may, at its option, suspend the performance of any other contract for goods or services it has in place with the Buyer ("**Other Buyer Contracts**"). Notwithstanding the terms of any Other Buyer Contracts, the Seller shall not be deemed in default of any Other Buyer Contracts as a result of any such suspension.

17. SECURITY INTEREST.

- 17.1. For sales involving Equipment used or to be used in the United States, Seller retains a security interest in the Equipment, materials, or spare parts including modification and replacements delivered hereunder and in the proceeds from the sale, exchange, collection, or disposition thereof until Buyer has made payment in full for such Equipment, materials, or spare parts. This clause serves as a security agreement, and Buyer authorizes Seller to file any financing statements deemed appropriate by Seller for purposes of perfecting the security interest granted herein. Without limiting the foregoing, Buyer shall upon request by Seller provide all information and signatures required by Seller to perfect such security interest. Seller reserves all rights granted to a secured creditor under the California and other applicable Uniform Commercial Codes including, but not limited to, the right upon demand to repossess the Equipment, materials, or spare parts delivered hereunder if Buyer fails to make timely payments. To simplify such possession, Seller may require the Buyer to assemble the collateral and make it available to Seller at a place reasonably convenient to both parties and designated by Seller.

18. RETENTION OF TITLE.

- 18.1. Notwithstanding anything else to the contrary, for sales involving Equipment used or to be used anywhere other than in the United States, the Buyer explicitly accepts that the Seller shall retain title to the Equipment until full payment in cleared funds has been received of all amounts due in accordance with the transaction and the Buyer shall only sell, pledge, or alienate the Equipment in the Buyer's ordinary course of business. Until title to the Equipment has passed to the Buyer, the Buyer shall take all measures to protect the Equipment and to ensure that Seller's right to the Equipment is in no way prejudiced including (without limitation) storing the Equipment separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property; not removing, defacing or obscuring any identifying mark or packaging on or relating to the Equipment; maintaining the Equipment in satisfactory condition and keeping them insured against all risks for their full price from the date of delivery; notifying the Seller immediately if it becomes subject to any of the events listed in **clause 18.2(a)-(d)**; and giving the Seller such information relating to the Equipment as the Seller may require from time to time. The Buyer shall give the Seller any assistance in taking any measures required to protect Seller's rights in Equipment not fully paid.
- 18.2. If before title to Equipment passes to the Buyer:
- (a) the Customer commits a material breach of any term of these Terms and Conditions including if the Buyer fails to make any payments to the Seller when due;
 - (b) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
 - (c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction

then, without limiting any other right or remedy, the Seller may require the Customer to deliver up at the Buyer's risk and expense all Equipment in its possession and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Equipment is stored in order to recover them.

19. SOFTWARE LICENCE.

- 19.1. All operating software, revisions of operating software, source code, and other software optionally purchased or used by the Equipment and furnished by the Seller shall remain the property of the Seller or its suppliers, whichever is applicable, and title thereto is not being sold or transferred to Buyer under this Agreement. The Seller hereby grants to the Buyer a personal, non-exclusive, paid-up, site-specific, non-transferable licence to use all such software contained in the Equipment for the purpose of operating the Equipment for its intended purposes. The Buyer may not make copies, may not transfer, and may not export the software without the Seller's prior written consent. The Buyer may not transfer the right to make copies to any third party without the Seller's prior written consent.

- 19.2. The Buyer must ensure only properly trained members of staff use the Equipment and that such members of staff at all times follow the Seller's recommendations and requirements from time to time regarding its use and procedures. The Seller may, in its sole discretion, provide software upgrades from time to time. The Buyer undertakes to perform a process qualification after (i) installation of the Equipment and after (ii) each and every software upgrade before proceeding to use the Equipment.
- 19.3. The Seller does not warrant that the operation of the Equipment will be continual and free from errors and to the fullest extent permitted by law all warranties, conditions, representations, undertakings (express or implied) other than those set out in this contract are hereby excluded.

20. CONFIDENTIALITY.

- 20.1. For the purposes of these Terms and Conditions, the term "**Confidential Information**" shall mean all information that is not generally known and that is confidential or proprietary including, but not limited to, all customer information, customer lists, price lists, supplier lists, marketing plans, financial information, processes, methods, practices, technical plans, research, development, manufacturing, purchasing, accounting, marketing or business systems or techniques and related documentation.
- 20.2. Each of the parties shall use at least the same degree of care that it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the party in connection with this transaction.
- 20.3. Each party warrants to the other that such care is reasonably calculated to prevent the disclosure of Confidential Information and use such Confidential Information only for the purposes of exercising or performing its rights and obligations under or in connection with this Contract.
- 20.4. Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information of the other that: (i) was in the public domain at the time it was disclosed or becomes in the public domain through no fault of the receiver; (ii) is disclosed with the prior written approval of the discloser; (iii) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party; (iv) was independently developed by the receiver prior to the receipt of the Confidential Information or without access to or use of Confidential Information; or (v) becomes known to the receiver on a non-confidential basis from a source other than the discloser who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party .
- 20.5. Notwithstanding the above, a party may disclose Confidential Information to the extent such Confidential is required to be disclosed by law or pursuant to the order or requirement of a court, administrative agency, or other governmental body of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this **clause 20.5**. It takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 20.6. The parties' obligations pursuant to this clause shall survive for a period of five (5) years after the date of disclosure.

21. PATENT, TRADEMARK, COPYRIGHT INFRINGEMENT INDEMNITY.

- 21.1. For the purposes of these Terms and Conditions, "**Intellectual Property Rights**" shall mean any patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect

the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- 21.2. The Seller shall indemnify the Customer in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use of the Equipment or Services.
- 21.3. Liability under this indemnity is conditional upon the Customer discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (a "**Claim**"), the Customer shall:
- 21.3.1. as soon as reasonably practicable, give written notice of the Claim to the Seller, specifying the nature of the Claim in reasonable detail;
 - 21.3.2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Seller, provided that the Customer may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to Seller, but without obtaining the Seller's consent) if the Customer reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
 - 21.3.3. give the Seller and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Seller and its professional advisers to examine them and to take copies (at the Seller's expense) for the purpose of assessing the Claim; and
 - 21.3.4. take such action as the Seller may reasonably request to avoid, dispute, compromise or defend the Claim.
- 21.4. In the event of such Claim, Seller may, at its sole cost and expense and at its sole discretion, modify or replace the Equipment or performance of the Services so that it becomes non-infringing.
- 21.5. Notwithstanding any other clause herein, the indemnity in this **clause 21** shall not cover the Customer to the extent that a claim under it results from Customer's negligence or wilful misconduct or as a result of the Customer not using the Equipment or Services in accordance with the instructions of the Seller. The Seller shall not be obligated to indemnify the Customer in respect of any Claim resulting from any act or omission of the Buyer, including but not limited to modification by Buyer of the Equipment or a combination by Buyer of Equipment with any other part or product whether or not such part or product is supplied by Seller or any method, process, or products in which, or in connection with the manufacture of which, the Equipment may in any way be used excepting a modification or combination for which Seller specifically agrees to in advance in writing.
- 21.6. The Seller shall have no liability for any Claims not notified to the Seller in writing within 5 years from the shipment date of the relevant Equipment or 5 years of completion of any Services.

- 22. GOVERNING LAW AND JURISDICTION.** This Contract (including any dispute or claim arising out of or on connection with it or its subject matter or formation) shall be governed by and construed according to the laws of the England and Wales. The parties consent to the courts of England and Wales having exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes of claims) arising out of or in connection the Contract or its subject matter or formation.
- 23. FORCE MAJEURE.** The Seller shall not be liable in any manner for any breach of the Contract nor liable for delay in performing, or failing to perform any obligations under the Contract if such delay or failure results from events, circumstances or causes beyond the Seller's reasonable control including without restriction strikes; lockout; fires; embargoes; war; riots; insurrection; Acts of God; accidents; delays of carriers, subcontractors, or suppliers; inability to obtain shipping space or materials; and governmental acts and regulations. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligations has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, the Seller may terminate this agreement by giving 14 days' written notice to the Buyer.
- 24. COMPLIANCE WITH LAW.** In the performance of its obligations under this Contract, the Buyer shall at all time strictly comply with all applicable laws, regulation, and orders from time to time in force. The Seller may terminate this agreement with immediate effect by giving written notice to the Buyer if the Buyer commits a breach of this clause.
- 25. ASSIGNMENT.** The Buyer shall not assign or delegate its rights and obligations hereunder. Any attempted assignment or delegation by the Buyer without the written prior consent of the Seller shall be void or of no effect. The Seller shall be permitted to assign or delegate its rights and obligations hereunder.
- 26. TERMINATION.**
- 26.1. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 26.1.1. the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so;
 - 26.1.2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 26.1.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 26.1.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 26.2. Without affecting any other right or remedy available to it, the Seller may terminate this agreement with immediate effect by giving written notice to the Buyer if:
- 26.2.1. the Buyer fails to pay any amount due under the Contract on the due date for payment; or

- 26.2.2. there is a change of control of the Buyer, where control shall have the same meaning as given to that term in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

27. MISCELLANEOUS.

- 27.1. **Entire Agreement:** The Contract constitutes the entire agreement between the Buyer and the Seller with respect to the subject matter hereof and supersedes all prior representations, negotiations, and agreements whether written or oral. No term or provision hereof shall be waived or modified or deemed waived or modified by either party unless such waiver or consent to modify is in writing signed on behalf of the party against whom it is asserted.
- 27.2. **Interpretation:** 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. 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. A reference to **writing** or **written** includes faxes and emails.
- 27.3. **No Partnership or Agency:** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 27.4. **Third Party Rights:** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 27.5. **Severance and Validity:** If any provision or part-provision of these Terms and Conditions 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 these Terms and Conditions.
- 27.6. **Anti-Bribery:** The Buyer shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK. Breach of this paragraph shall be deemed a material breach of the Contract.
- 27.7. **Data Protection:** The parties agree that personal data may be shared for the purposes of this agreement. Each party undertakes to comply with applicable data protection laws in their handling and processing of any personal data transferred to them by the other party in the performance of their obligations under this agreement.
- 27.8. **No Waiver:** No failure or delay by a party to exercise any right or remedy provided under this 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.

28. NOTICES.

- 28.1. All communications given to a party under or in connection with the Contract shall be:

- 28.1.1. 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
 - 28.1.2. sent by email to the address specified in the Quotation.
- 28.2. Any notice or communication shall be deemed to have been received:
- 28.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - 28.2.2. 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 or at the time recorded by the delivery service; and
 - 28.2.3. if sent by email at the time of transmission, or, if this time falls outside business hours (of 8am to 5pm) at 8.00 am on the next business day after transmission.
- 28.3. This clause shall 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.

-End-