



## 1. Definitions and interpretation

- 1.1 The following words have the following meaning in these conditions.  
"Buyer" means the company, firm, body or person so named in the order, being the purchaser of the Goods.  
"Seller" means Vesper Technologies Ltd.  
"Contract" means the contract between the Buyer and the Seller for the sale and purchase of the Goods in accordance with these conditions.  
"Goods" means the hardware and equipment specified in each Contract and any software which accompanies such hardware and equipment.  
"Sanctions and Export Controls" means all laws and regulations relating to economic and trade sanctions and export controls of (without limitation) the UK, US and EU and any other applicable sanctions and export control laws and regulations in the Buyer's place of establishment or place of business.
- 1.2 Condition headings do not affect the interpretation of these conditions. References to conditions are to the conditions within these terms and conditions.
- 1.3 A reference to any statute or statutory instrument shall be construed as including a reference to any modification, extension or re-enactment thereof from time to time.
- 1.4 Words in the singular include in the plural and vice versa.
- 1.5 Any words following the terms "including", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. Application of conditions

- 2.1 All quotations are made and all orders are accepted by the Seller subject to these conditions.
- 2.2 These conditions shall apply to and are incorporated in the Contract to the exclusion of any other terms or conditions contained in or referred to in the Buyer's purchase order, confirmation of order and/or other documentation and/or which are implied by law, trade customer, practice or course of dealing.
- 2.3 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Seller unless in writing and signed by a duly authorised representative of the Seller.
- 2.4 The United Nations Convention of the International Sale of Goods shall not apply to the Contract.
- 2.5 It is the Buyer's obligation, responsibility and cost to comply with all applicable requirements and restrictions imposed by law or by governmental or other authorities relating to the possession, use, import, export and/or resale of the Goods.
- 2.6 Where necessary, the Buyer shall inform the Seller at a reasonable time before delivery of any documents which it is necessary for the Seller to provide in order to allow export of the Goods in compliance with the laws of any relevant jurisdiction.

## 3. Basis of sale

- 3.1 Any quotation is valid for a period of 24 hours only from the time of issue by the Seller and automatically lapses on expiry of such period and is subject always to availability of the Goods.
- 3.2 The Seller may withdraw its quotation without liability at any time prior to the expiry of such period by written notice to the Buyer.
- 3.3 Any order placed upon a quotation or otherwise shall be accepted entirely at the discretion of the Seller and if so accepted shall only be accepted upon these conditions.
- 3.4 The Buyer shall ensure that all orders are complete and accurate. The Seller shall not be obliged to agree to any amendments to an order once the order has been submitted to the Seller.
- 3.5 Each order or acceptance of a quotation for Goods by the Buyer shall be deemed to be an offer by the Buyer to purchase the relevant Goods subject to these conditions.
- 3.6 A binding contract shall not come into existence between the Seller and the Buyer unless and until the Seller issues a written order acknowledgement to the Buyer or the Seller delivers the Goods to the Buyer (whichever occurs earlier).
- 3.7 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable Contract. Each instalment shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 3.8 The Buyer indemnifies the Seller in full and holds the Seller harmless

from and against all losses, damages, costs, penalties, fines, expenses and liabilities that the Seller may incur (directly or indirectly including financing costs and legal costs on a full indemnity basis) following any breach by the Buyer of any of its obligations under these conditions.

- 3.9 To the extent that the Goods include software, the Buyer acknowledges and agrees that:
  - (a) the Buyer's use of such software is subject to the rights and restrictions for use of the software as are imposed by the owner of the intellectual property rights in the software and the Buyer shall comply with all applicable licence agreements, terms of use and registration requirements relating to the same;
  - (b) nothing in these conditions will be construed as assigning to the Buyer any intellectual property rights in such software;
  - (c) the Seller gives no warranty in respect of such software and shall not be liable to the Buyer in respect of any defect or error in such software or any other loss, damage, costs, penalties, fines, expenses or liabilities arising from use of such software, but nothing in this condition shall affect any warranty that may be provided by any third party in respect of any such software; and
  - (d) the Seller accepts no returns in respect of the software.

## 4. Quantity and description

- 4.1 The quantity and description of the Goods shall be as set out in the Seller's acknowledgement of order or (if there is no acknowledgment of order) quotation.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Seller, and any descriptions or illustrations contained in the Seller's catalogues, brochures and/or other advertising materials are issued or published for illustrative purposes only and they do not form part of the Contract.
- 4.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller. Where the price of the Goods quoted by the Seller to the Buyer is incorrect due to any such error or omission, the Seller will notify the Buyer as soon as such a mistake comes to the Seller's attention and:
  - (a) if the Goods' correct price is less than the quoted price, the Buyer will be charged the lower amount when the Goods are dispatched;
  - (b) if the Goods' correct price is higher than the quoted price, the Buyer may either cancel the order or choose to continue with the order at the correct higher price.
- 4.4 Any advice or recommendation given by the Seller or its employees, contractors, agents or other authorised representatives to the Buyer or its employees, contractors, agents or other authorised representatives about the storage, application or use of the Goods is followed or acted on entirely at the Buyer's own risk.

## 5. Delivery, safety & risk

- 5.1 All delivery times stated by the Seller are given in good faith but are estimates only and are subject to revision from time to time. Time is not of the essence as to the delivery of the Goods. Delay in the delivery of the Goods shall not be a breach of Contract and the Seller shall not be liable for the consequences of any delay in delivery, howsoever caused.
- 5.2 The Seller may deliver the Goods in advance of the estimated delivery date on written notice to the Buyer.
- 5.3 If the Seller fails to deliver the Goods within 5 days of the estimated delivery date, the Buyer may cancel the Contract by notice in writing to the Seller, subject to condition 6.5, provided that:
  - (a) the Buyer may not cancel the Contract if written notice of cancellation is given after the Goods have been despatched; and
  - (b) the Buyer on such cancellation has no further claim and hereby waives all claims against the Seller in respect of that Contract.
- 5.4 Without prejudice to the foregoing, if the Buyer accepts delivery of the Goods after the estimated delivery time, it hereby waives all claims against the Seller in respect of such delay.
- 5.5 Risk in the Goods shall pass to the Buyer from the time of delivery. Delivery shall take place as specified in the Seller's acknowledgement of order or as otherwise confirmed to the Buyer and shall either take place:
  - (a) at the Seller's premises and the Buyer shall collect the Goods and/or arrange carriage from the Seller's premises, in which circumstances delivery shall take place immediately prior to loading and the Goods shall be loaded onto the Buyer's means of carriage at the risk of the Buyer; or

- (b) at the Buyer's premises or such other premises as specified by the Buyer, and the Seller shall arrange carriage, in which circumstances risk shall pass immediately prior to off-loading the Goods at such delivery location and off-loading shall be at the risk of the Buyer.
- 5.6 Where delivery takes place at the Buyer's premises (or other premises specified by the Buyer), the Buyer shall be responsible for preparing the delivery location for the delivery of the Goods and for the provision of all necessary access and facilities reasonably required to deliver the Goods. The Seller may decline to deliver the Goods if it feels that it would be unsafe, unlawful or unreasonably difficult to do so or if the premises (or access to them) is unsuitable. If the Seller is prevented from carrying out delivery or installation on the specified date due to reasons set out in this condition 5.6, or the Buyer fails to take delivery of the Goods, the Seller may (in its absolute discretion) levy additional charges to the Buyer to cover the Seller's costs and losses arising from this event, including (without limitation) the additional costs of handling and storing the Goods and transportation costs.
- 5.7 The Buyer shall inspect the Goods on delivery. If any Goods are delivered damaged or are defective, the Buyer must notify the Seller as soon as reasonably possible in writing by means of the cancellation and returns procedure in condition 10 and in any event (a) within 7 days of delivery where Goods are delivered damaged on delivery; (b) within 30 days of delivery where Goods are defective and the defect would have been apparent on delivery. In the event that written notification of damage or defect on delivery is not received by the Seller within the requisite time then the Buyer shall be deemed to have accepted the Goods and delivery shall be complete.
- 5.8 Should the Buyer notify the Seller that the Goods are damaged or defective, the Buyer shall grant the Seller (and/or its carrier or other authorised representative) access to the premises on which the Goods are stored and to the Goods in order that the Goods may be inspected.
- 5.9 Where the Buyer has notified the Seller of damage or defect in accordance with condition 5.7, the Seller's obligation in respect of damaged or defective Goods shall be limited, at the absolute discretion of the Seller, to either replacing or repairing the Goods or refunding the price of the Goods. The Seller shall not be liable in respect of any loss, damage or defect to the Goods which arises:
  - (a) following the transfer of risk to the Buyer pursuant to condition 5.5;
  - (b) during the loading or unloading of the Goods when the Buyer arranges carriage, or during the unloading of Goods when the Seller arranges carriage;
  - (c) due to the installation, handling, use, storage, repair to or alteration of the Goods by the Buyer or any other person following delivery.
- 5.10 The Seller may deliver the Goods in instalments. Each instalment shall be treated as a separate Contract. Where the Goods are to be delivered in instalments or against call-off and the Buyer either:
  - (a) fails to accept any delivery when due; or
  - (b) defaults in making any payment when due, then the Seller may cancel any or all subsequent deliveries and the Buyer shall compensate the Seller in full for any loss or expense arising from such cancellation and, notwithstanding the Seller's duty to mitigate its loss, the Buyer shall compensate the Seller in full for the loss of the price in respect of Goods ordered but not delivered.
- 5.11 Some Goods may come with a manufacturer's guarantee. For details, the Buyer should refer to the manufacturer's guarantee provided with the Goods.
- 5.12 The Buyer is responsible for obtaining at its own cost such import licences and other consents that are required in respect of delivery of the Goods and, if required by the Seller, the Buyer shall make those licences and consents available to the Seller prior to delivery.
- 5.13 The Seller shall not be under any obligation to give notice pursuant to section 32(3) of the Sale of Goods Act 1979 in respect of delivery of any Goods.

## 6. Price

- 6.1 Unless otherwise stated by the Seller and subject to any adjustment permitted by these conditions, the price for the Goods will be the price set out in the Seller's order acknowledgement or (if none is issued) the Seller's quotation.
- 6.2 The price in a quotation does not include unless otherwise specified:
  - (a) any VAT and/or any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the Goods;
  - (b) any cost of effecting delivery, shipping and/or carriage;
  - (c) any special packaging, alteration or modification to the order required by the Buyer; or
  - (d) any insurance, which may be payable by the Buyer in addition to the price of the Goods.
- 6.3 The price is based on the description and quantity of the Goods as set out in the Contract and any other information provided by the Buyer. The Seller reserves the right (in its absolute discretion) to amend the price to cover any increase in cost which may arise as a result of additional Goods being requested by the Buyer which the

Seller agrees to provide and/or additional or incomplete instructions or information being provided by the Buyer.

- 6.4 The Seller reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost of the Goods that is due to any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other such costs). If the Buyer refuses to pay any such price increase, the Seller shall be entitled to cancel the Contract without liability, provided the Buyer's written notice of such cancellation is received by the Seller within 2 days of the Seller's notice of the price increase.
- 6.5 The Seller may require the Buyer to pay a deposit. Any deposit paid by the Buyer is non-refundable unless otherwise agreed by an authorised officer of the Seller, acting reasonably, in writing.
- 6.6 Rates of tax and duty on the Goods will be those applying at the time of delivery. The Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller any value added tax that is chargeable on the supply of the Goods.
- 6.7 Quotations in a currency other than pounds sterling are based on the rate of exchange at the time of quoting and (unless otherwise agreed in writing between the parties) the Seller reserves the right to vary the price if a different rate of exchange is applicable at the date of invoice.
- 6.8 The Seller may invoice the Buyer for the Goods at any time on or after the delivery of the Goods or any instalment of the Goods (as appropriate). If any delivery is postponed at the request or by the default of the Buyer then the Seller may submit its invoice at any time after the Goods are ready for delivery or would have been ready but for such request or default on the part of the Buyer.

## 7. Payment terms

- 7.1 The Buyer shall pay the price of the Goods in cash or otherwise in cleared funds on the date of delivery, unless they have an approved credit account with the Seller.
- 7.2 If the Buyer has an approved credit account with the Seller, payment is due no later than 30 days after the date of the Seller's invoice unless otherwise agreed in writing by the Seller.
- 7.3 If the Buyer fails to pay the Seller in full on the due date the whole of the balance of the price for the Goods then outstanding shall become immediately due and payable and without prejudice to any other right or remedy available to the Seller and notwithstanding the retention of title pursuant to condition 9, the Seller may:
  - (a) terminate the Contract or suspend or cancel future deliveries of the Goods;
  - (b) cancel any discount offered to the Buyer;
  - (c) charge interest on the amount outstanding at the rate equivalent to that set pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, calculated (on a daily basis) from the date of invoice until the date of payment (before and after any judgment, unless the court orders otherwise), compounded on the first day of each calendar month.
- 7.4 If the Buyer has an approved credit account the Seller reserves the right to withdraw it or reduce the credit limit or bring forward the date for repayment. The Seller may do any of these at any time without notice.
- 7.5 The Buyer does not have the right to withhold payment or set off any monies due to the Seller against any monies the Seller owes to the Buyer.
- 7.6 Without prejudice to the other rights and remedies that it may have at contract and at law, whilst the Buyer owes money to the Seller, the Seller has a general lien on any of the Buyer's Goods or other property in the Seller's possession. The Seller shall be entitled, on the expiry of 14 days' notice in writing, to dispose of the Goods or other property in such manner and at such price as it thinks fit and to apply the proceeds towards the amounts outstanding.
- 7.7 The Buyer consents to the Seller making credit reference and other enquiries for the purpose of assessing the credit worthiness of the Buyer and holding the results of the same for its records.
- 7.8 Without prejudice to any other rights it may have under law and this Contract, all sums payable to the Seller under the Contract become immediately due and owing on its termination.
- 7.9 Time for payment of the price shall be of the essence of the Contract.

## 8. Title to the goods

- 8.1 Title to and ownership of the Goods does not pass from the Seller to the Buyer until the invoice price, and any other money which is due and payable by the Buyer to the Seller at the date of the Contract, has been paid in full.
- 8.2 Until such time as title has passed, the Buyer shall:
  - (a) have possession of the Goods on a fiduciary basis as bailee for the Seller;
  - (b) store the Goods (at no cost to the Seller) in satisfactory condition and separately from all the Buyer's other goods and equipment or that of a third party, so that they remain readily identifiable as the Seller's property;

- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep the Goods insured on the Seller's behalf for their full price against all risks for which a prudent buyer would insure them but the Buyer may use or re-sell the Goods in the ordinary course of its business.

- 8.3 The Buyer's right to possession of the Goods before ownership has passed shall terminate immediately if:
- (a) any of the circumstances set out in condition 13.1 arise;
  - (b) the Contract is terminated for any reason;
  - (c) the Buyer encumbers or in any way charges the Goods; or
  - (d) the Buyer fails to make any payment to the Seller on the due date.
- 8.4 The Buyer grants to the Seller, its agents and employees an irrevocable licence at any time before title to the Goods has passed to the Buyer to enter any premises where the Goods are or may be stored in order to inspect them or, where the Buyer's right to possession has terminated, to remove them. All costs incurred by the Seller in repossessing the Goods shall be borne by the Buyer.
- 8.5 The Buyer shall inform the Seller (in writing) immediately if the Buyer becomes insolvent or suffers any other event pursuant to condition 13.1.
- 8.6 Notwithstanding the Seller's retention of title to the Goods, the Seller reserves the right to take legal proceedings to recover the price of Goods supplied should the Buyer not pay the Seller by the due date.
- 8.7 If the Buyer uses a banking facility, factor or invoice discounter who may claim security over the Buyer's assets, the Buyer must notify such entity of the Seller's property rights over Goods pursuant to this condition 8.
- 8.8 On termination of the Contract for any reason, the provisions of this clause 9 shall remain in effect.

## 9. Warranty and limitation of liability

- 9.1 The Seller warrants to the Buyer that the Goods as at the time of delivery:
- (a) materially comply with their description on the Seller's order acknowledgement form (except where changes are required to ensure the Goods comply with applicable statutory or regulatory requirements); and
  - (b) are free from material defect (save in respect of software which is not subject to any warranty from the Seller).
- 9.2 The Seller gives no other warranties and hereby excludes to the maximum extent permitted by law the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and all other warranties, representations, terms and other conditions (whether express or implied) as to the Goods and/or their delivery. Any extended warranties purchased by the Buyer in respect of the Goods are provided by third parties and accordingly the Seller shall have no liability in respect of any such extended warranties.
- 9.3 Subject to condition 9.5, the Seller shall under no circumstances whatever be liable to the Buyer, whether in tort (including negligence), contract, misrepresentation or otherwise for any:
- (a) loss of profits;
  - (b) loss of business;
  - (c) loss of goodwill;
  - (d) loss of anticipated savings;
  - (e) loss of goods;
  - (f) loss of contract;
  - (g) loss or corruption of data or information; or
  - (h) special, indirect, consequential or pure economic loss, costs, damages, charges or expenses, arising under or in connection with the Contract.
- 9.4 Subject to conditions 5.9 and 9.5 the Seller's total liability to the Buyer in contract, tort (including negligence), misrepresentation, restitution or otherwise arising under or in connection with the Contract shall be limited to the invoice price of the Goods in the Contract.
- 9.5 Nothing in these terms restricts or limits the Seller's liability for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979 or any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 9.6 Subject to condition 9.5, the Seller hereby excludes, to the maximum extent permitted by law, all liability in respect of all and any claims that the sale, supply and/or use of the Goods infringes the intellectual property of a third party.
- 9.7 The Seller may from time to time make a recommendation or give advice as to the compatibility of Goods and/or their suitability for use in respect of the Buyer's system or network. The Buyer relies on all such recommendations and advice at its own risk. The Seller hereby excludes, to the maximum extent permitted by applicable law, all liability to the Buyer should it rely on or otherwise take action in respect of the Seller's recommendations or advice.

## 10. Cancellation and returns procedure

- 10.1 No order which has been acknowledged or delivered by the Seller may be cancelled in whole or in part by the Buyer, except (a) where permitted under these conditions; or (b) with the prior written agreement of the Seller provided that (except where cancellation is due to the Seller's default) the Buyer indemnifies the Seller in full against all loss, costs, damages, charges and expenses incurred by the Seller as a result of cancellation or part cancellation (including, without limitation, in respect of Goods that the Seller has committed to acquire to fulfil such order). In the event of part cancellation, the Seller may invoice the Buyer for any difference in selling price per unit of the Goods applicable to the quantity dispatched up to the time of cancellation compared to the quantity ordered.
- 10.2 The Buyer is only entitled to return Goods to the Seller (whether or not damaged or defective), subject to condition 10.3, if it complies with the following returns procedure set out below and in condition 10.4:
- (a) using the on-line returns form accessible at [www.Vespertec.com](http://www.Vespertec.com), the Buyer shall advise the Seller in writing as soon as possible of its wish to return the Goods and, in any event, within 30 days of delivery if there is defect which is apparent on delivery, within 14 days of delivery if there is no defect or damage and within 7 days of delivery if there is damage on delivery;
  - (b) the Buyer shall on request grant the Seller (and/or its carrier or other authorised representative) access to the premises on which the Goods are stored and to the Goods in order that any damage or defect claimed by the Buyer may be inspected;
  - (c) the Seller shall consider each returns request on a case by case basis;
  - (d) for Goods which the Buyer wishes to return because they are damaged or defective - if in the reasonable opinion of the Seller, the Goods were damaged or defective in material or workmanship, the Seller will (at its absolute discretion) either replace or repair the Goods or refund the price of the Goods and confirm to the Buyer whether such Goods should be returned;
- 10.3 The Buyer acknowledges that:
- (a) for Goods which the Buyer wishes to return and which are not damaged or defective, the Seller may, in its absolute discretion (but is not obliged to), agree to the return of the Goods to the Seller subject to the Buyer paying to the Seller a cancellation and handling fee plus the cost of collection and/or delivery of the original Goods and any replacement Goods. The Seller's right to charge such fees is in addition to the right to retain any deposit paid by the Buyer. Where the Goods are in their original, unopened packaging, a cancellation and handling fee of 10% of the invoice price shall be charged. The Seller, acting reasonably, reserves the right to charge higher cancellation fees in certain circumstances to reflect additional costs and losses incurred or suffered by the Seller (for example, where Goods have been opened or their packaging has in any way been tampered with or damaged, or where Goods have been used);
  - (b) for Goods which are not damaged or defective and which are specified as "non-returnable", which may include (without limitation) Goods which are purchased to fulfil the Buyer's order, the Buyer's ability to return such Goods will be subject to the returns policy of the relevant third party supplier or manufacturer and the Seller reserves the right to refuse a return of such Goods where such supplier or manufacturer does not accept such return; and;
  - (c) under no circumstances whatsoever does the Seller accept returns in respect of software.
- 10.4 Should the Seller accept the return of Goods from the Buyer, such acceptance is subject to:
- (a) the Buyer's compliance with the provisions of the returns procedure in condition 10.2 and to the Seller agreeing to the return of the Goods and confirming this in writing to the Buyer;
  - (b) the Buyer complying precisely with the Seller's return shipping instructions and any other return instructions given to the Buyer from time to time by the Seller;
  - (c) the Goods being returned complete and in the same condition and same packaging as when they were delivered (including, without limitation, the return of all accessories) and being as fit for sale on their return as they were on delivery (failing which the Seller may levy a higher cancellation fee under condition 10.3(a)); and
  - (d) the Buyer complying at all times with any additional requirements notified to the Buyer by the Seller to enable the Seller to comply with any requirements imposed by its third party supplier or manufacturer.
- 10.5 Should the Buyer return Goods otherwise than in accordance with these conditions, the Seller shall be entitled (in its absolute discretion) to refuse to accept delivery, to withdraw the Buyer's right of return of the Goods, and/or to return the Goods at the Buyer's expense. Should the Buyer return the Goods incomplete and/or without any of the accessories with which they were delivered, the Seller shall be entitled to retain the cost it incurs in replacing such items from any refund or other sums due to the Buyer.

- 10.6 The Seller will not accept or be liable for any returns claim received other than in accordance with the returns policy in condition 10.2 and 10.4, nor shall the Seller be liable for any claim that Goods are damaged or defective where the damage or defect is caused or contributed to by:
- (a) the Buyer's use of the Goods after giving notice in accordance with condition 5.7;
  - (b) the Buyer's deliberate misuse of the Goods;
  - (c) the Buyer's failure to follow the Seller's or the manufacturer's instructions relating to storage, commissioning, installation, use, maintenance or handling of the Goods or, where there are none, good trade practice regarding the same; or
  - (d) fair wear and tear, negligence or abnormal storage or working conditions.
- 10.7 The Seller may suspend or cancel the order without liability to the Buyer, by written notice if:
- (a) the Buyer fails to pay the Seller any money when due (under the order or otherwise)
  - (b) the Buyer becomes insolvent or suffers any other event set out in condition 13.1;
  - (c) the Buyer fails to honour its obligations under these terms; or
  - (d) the Seller's source of supply of the Goods as at order acceptance is withdrawn or otherwise cancelled.

## 11. Specification

- 11.1 The Seller shall be entitled to modify the designs and specifications for Goods without prior notification, provided such modification does not materially affect the performance of the Goods.
- 11.2 No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Contract.
- 11.3 Any Goods which are specified as Configure to Order or Build to Order are configured by the Seller to the specifications requested by the Buyer using manufacturer original new or bulk parts.

## 12. Resale of goods

- 12.1 Where the Buyer intends to resell Goods, it shall not make any representations, warranties, guarantees or other commitments with respect to the specifications, features or capabilities of the Goods which are inconsistent with, extend beyond or are in addition to those provided by the Seller.
- 12.2 Where the Buyer intends to resell Goods which are specified as Configure to Order or Build to Order, the Buyer must ensure that those Goods are described as such to its customer.

## 13. Termination

- 13.1 Without prejudice to any other right or remedy available to the Seller, the Seller may terminate the Contract or suspend any further deliveries under the Contract without liability to the Buyer if any of the following events occur:
- (a) the ability of the Buyer to accept delivery of the Goods is delayed, hindered or prevented by circumstances beyond its reasonable control; or
  - (b) an order is made or a resolution is passed for the winding up of the Buyer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Buyer; or
  - (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the Buyer, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Buyer, or notice of intention to appoint an administrator is given by the Buyer or its directors; or
  - (d) a receiver is appointed of any of the Buyer's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Buyer, or if any other person takes possession of or sells the Buyer's assets; or
  - (e) the Buyer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
  - (f) the Buyer ceases, or threatens to cease, to trade; or
  - (g) the Buyer takes or suffers any similar or analogous action to those set out above in this condition 13.1 in any jurisdiction in consequence of debt.
- 13.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision of these conditions expressly or implicitly stated to survive termination.

## 14. Confidentiality

- 14.1 The Buyer undertakes that it shall not at any time during the Contract, and for a period of six years after delivery disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Seller disclosed to or otherwise obtained by the Buyer under or in connection with the Contract,

including the existence and terms of the Contract and any associated documentation (including any invoices), except as permitted by condition 14.2.

- 14.2 The Buyer may disclose the Seller's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Buyer's obligations under the Contract. The Buyer shall procure that its employees, officers, representatives or advisers to whom it discloses the Seller's confidential information comply with this clause 14; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 The Buyer shall not use any of the Seller's confidential information for any purpose other than to perform its obligations under the Contract.
- 14.4 The Seller does not make any express or implied warranty in relation to the accuracy or completeness of, and reserves all rights in, its confidential information. No rights in respect of the Seller's confidential information other than those expressly stated in this condition 14 are granted to the Buyer or to be implied from these conditions.
- 14.5 The Buyer acknowledges and agrees that the Seller would not have an adequate remedy at law and would therefore be irrevocably harmed in the event that the terms of this condition 14 were breached. It is, accordingly, agreed that the Buyer will not object to the Seller obtaining equitable relief, including injunctions and specific performance, in the event of any breach of the terms of this condition 14 by the Buyer, in addition to all the remedies available to the Seller at law or otherwise at equity and in the court of any relevant country.
- 14.6 The provisions of this condition 14 shall continue to apply after termination of the Contract.

## 15. Force majeure

The Seller reserves the right without liability to the Buyer to defer the date of delivery, or to cancel the Contract or reduce the amount of Goods ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation the following force majeure events: strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, act of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, volcano, or default of suppliers or sub-contractors.

## 16. General

- 16.1 The Seller's employees, contractors and agents are not authorised to make any contractually binding representations concerning the Goods. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations. However, nothing in these conditions limits the Seller's liability for fraudulent misrepresentation.
- 16.2 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 16.3 The Buyer shall not, without the prior written consent of the Seller, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Seller may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 16.4 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else. The Contracts (Rights of Third Parties) Act 1999, to the extent it is applicable to the Contract, is hereby expressly excluded.
- 16.5 Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract (or such other address as may have been notified by that party for such purposes. A notice delivered by hand shall be deemed to have been received when delivered (or, if delivery is not in business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.
- 16.6 If any provision or part provision of these conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, it shall be deleted from these conditions and the other provisions and parts of the same provision shall remain in full force and effect.
- 16.7 No variation to these conditions shall apply unless agreed in writing by an authorised signatory of both parties.

- 16.8 Nothing in these conditions or in a Contract shall be intended to, or shall operate to, create a partnership between the parties or to authorise either party to act as agent for the other. Neither party shall have the right to act in the name of or on behalf of the other or to bind the other in any way.
- 16.9 If the Buyer is more than one person, each of the Buyers has joint and several obligations and liability to the Seller under these conditions.
- 16.10 The Seller reserves the right at any time and without liability to correct any clerical, typographical or similar errors or omissions made by its employees, contractors or agents.
- 16.11 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.

#### **17. Regulatory compliance**

- 17.1 The Buyer warrants and agrees that it shall (and shall procure that its directors, officers, agents, affiliates and employees shall):
- (a) observe and comply with all Sanctions and Export Controls;
  - (b) not sell, transfer, export, re-export, or forward the Goods to any individual, entity or jurisdiction subject to Sanctions and Export Controls;
  - (c) determine export and import licensing or permitting requirements for the Goods, obtain any required licenses and permits, and ensure that any such licenses, permits and authorisations are provided to the Seller within 5 working days, on request;
  - (d) keep records relating to the Goods, including but not limited to, any documents relating to the sale, transfer, export, re-export, or forwarding of the Goods, for a minimum of 5 years after entering into the Contract with the Buyer.
- 17.2 The Seller assumes no liability to the Buyer or any other person for the Buyer's acts of non-compliance with Sanctions and Export Controls.

#### **18. Governing law and jurisdiction**

- 18.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales.
- 18.2 Subject to condition 18.3, the parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).
- 18.3 Nothing in this condition 18 shall limit the right of the Seller to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the Seller from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.