

## STANDARD CONDITIONS FOR THE PURCHASE OF GOODS

### NMRN OPERATIONS

A company limited by guarantee and incorporated under number 09988314 with registered charity number 1169061 whose registered office is at National Museum Of The Royal Navy, HM Naval Base, PP66, Portsmouth, Hampshire PO1 3NH ("the **Buyer**")

#### 1 INTERPRETATION

##### 1.1 Definitions

In these conditions unless the context otherwise requires the following words and expressions shall have the following meanings:

**Applicable Data Protection Law** means all applicable data protection laws including the General Data Protection Regulation (EU) 2016/679 ("GDPR"), read in conjunction with and subject to the Data Protection Act 2018, in each case as amended, re-enacted or replaced from time to time;

**Confidential Information** all information of the Buyer (in whatever medium including in written, oral, visual or electronic form and whether before or after the date of this Agreement) including all business, financial, commercial, technical, operational, organisational, legal, management and marketing information;

**Force Majeure** any act, event, omission or cause or circumstance whatsoever beyond the reasonable control of a Party, including without limitation, the following:

- (a) events outside human control, including earthquake, epidemic, flood, windstorm, fog and other extreme adverse weather;
- (b) outbreak of hostilities, riot, civil disturbance, acts of terrorism; or
- (c) an act of any government or authority (including refusal or revocation of any licence or consent);

<b>Goods</b>	the goods (including any instalment of the goods and any part of them) which the Seller is to supply in accordance with the Agreement;
<b>Intellectual Property</b>	all inventions, patents, utility models, designs (both registered or unregistered and including rights relating to semi-conductor topographies), database rights, copyright and trade marks (both registered and unregistered), together with all rights to the grant of and applications for the same and including all similar or analogous rights and all other rights in the nature of intellectual and industrial property throughout the world and all future rights of such nature;
<b>Order</b>	an order from the Buyer to purchase Goods, together with all other documents referred to in the order;
<b>Parties</b>	the Buyer and the Seller collectively, and "Party" means either of them and their permitted assignees;
<b>Seller</b>	a person who agrees to sell Goods to the Buyer;
<b>Software</b>	any and all computer programs and computer software (of whatever type and in whatever form or media) installed on or supplied with the Goods at the time of delivery and either necessary for their operation in the manner contemplated by the Buyer or otherwise referred to in the Order; and
<b>Specifications</b>	all matters concerning the structure, design, operation, performance and functionality of the Goods (including drawings, designs, patterns, descriptions, technical and functional specifications), and particulars of quantities, weights and dimensions, set out or referred in the Order and (to the extent not inconsistent with the Order) in any manuals, sales materials and other documentation produced by or for the Seller.

## 1.2 Construction

1.2.1 In the Agreement, unless otherwise specified or the context otherwise requires:

- (a) words importing the singular only shall include the plural and vice versa;
  - (b) words importing the whole shall be treated as including a reference to any part thereof;
  - (c) reference to the Agreement or to any other document is a reference to the Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of the Agreement; and
  - (d) reference to any legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which most closely approximates in that jurisdiction to the English legal term.
- 1.2.2 Any phrase in the Agreement introduced by the term “include”, “including”, “in particular” or similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.
- 1.2.3 Headings used in the conditions are for reference only and shall not affect its construction or interpretation.

### 1.3 Other references

In the conditions a reference to:

- 1.3.1 **“the Agreement”** means an agreement for the purchase of the Goods consisting of contract documentation as described in condition 2.1, the conditions and any schedules;
- 1.3.2 **“conditions”** means these standard conditions for the purchase of goods and any special conditions agreed in writing by the Parties;
- 1.3.3 **“person”** includes any individual, company, Buyer, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established), and
- 1.3.4 **“written”** or **“in writing”** includes any non-transitory form of visible reproduction of words including email but not fax or any form of messaging via social media or text message..

## 2 BASIS OF THE PURCHASE

- 2.1 The Agreement will be established on the first to occur of the following:
  - 2.1.1 written confirmation or acceptance by the Seller of an Order;

2.1.2 issue by the Buyer of an Order based on a quotation for Goods by the Seller; or

2.1.3 the Seller delivering Goods pursuant to an Order.

The conditions will apply to and be incorporated into the Agreement and prevail over any terms or conditions of the Seller contained or referred to in the Seller's acceptance, confirmation of order or in correspondence or elsewhere, or any inconsistent terms or conditions implied by law, trade custom, practice or course of dealing.

2.2 The Seller may not cancel the Agreement. The Buyer is entitled to cancel the Agreement in whole or in part by giving written notice to the Seller at any time prior to delivery of the Goods in which event the Buyer's sole liability will be to pay to the Seller fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits or loss of business (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.

2.3 The Buyer may at any time make changes in writing relating to the Order, including changes in the Specifications (including quantities), method of shipment, packing or time or place of delivery. If such changes result in an increase in cost of, or time required for, performance of the Agreement, an equitable adjustment will be made to the price, delivery schedule or both. Any such claim or adjustment must be approved by the Buyer in writing before the Seller proceeds with such changes.

2.4 It is the responsibility of the Seller to acquaint itself with the purposes for which and the environment in which the Goods supplied are to be used.

### **3 DELIVERY, SHIPPING AND LICENCES**

3.1 The date and time for delivery of the Goods shall be as specified in the Order or, if no such date is specified, then delivery shall take place within 28 days of the date of the Order. Unless otherwise stipulated by the Buyer in the Order, deliveries shall only be accepted by the Buyer in normal business hours (Monday to Friday between 9am to 5pm).

3.2 The Goods shall be delivered, packaged properly and securely and, where applicable, in accordance with the reasonable requirements of the Buyer, to the Buyer's place of business or to such other place of delivery as is stated in the Order or otherwise by the Buyer in writing prior to delivery of the Goods. The Seller shall offload and stack the Goods as reasonably directed by the Buyer or its duly authorised representative.

3.3 The Buyer shall not be bound to accept delivery of the Goods by instalments.

3.4 The date and time of delivery shall be of the essence of the Agreement. Failure to deliver the Goods (or any instalment of the Goods, if the Buyer has agreed to accept delivery by instalments) on the due date (and time, if specified) shall entitle the Buyer,

at its option and without prejudice to its other rights and remedies, to treat such failure as a breach of condition and:

- 3.4.1 to accept delivery of the Goods at the date and time of actual delivery; or
  - 3.4.2 to reject the Goods when actually delivered; and/or
  - 3.4.3 to cancel or vary delivery of any other Goods not yet delivered under the Agreement; and/or
  - 3.4.4 to receive from the Seller reimbursement of any payments made by the Buyer for rejected or cancelled Goods less a reasonable allowance for use and all costs, losses or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods on to the due date (and time, if specified), including the cost of obtaining substitute goods from another supplier where applicable, but less any sums reimbursed by the Seller.
- 3.5 If a delivery contains more Goods than the Buyer agreed, the Buyer shall be entitled, without prejudice to any other rights and remedies:
- 3.5.1 to accept delivery of all the Goods delivered, in which case it shall not be bound to pay for the excess; or
  - 3.5.2 to accept delivery of the Goods which should have been delivered, but reject the excess; or
  - 3.5.3 to reject the Goods delivered; and/or
  - 3.5.4 to cancel or vary delivery of any other Goods not yet delivered under the Agreement; and/or
  - 3.5.5 to receive from the Seller reimbursement of any payments made by the Buyer for rejected or cancelled Goods less a reasonable allowance for use and all costs, losses or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods on to the due date (and time, if specified), including the cost of obtaining substitute goods from another supplier where applicable, but less any sums reimbursed by the Seller.
- 3.6 If a delivery contains fewer Goods than the Buyer agreed, the Buyer shall be entitled, without prejudice to any other rights and remedies:
- 3.6.1 to accept delivery of all the Goods delivered, in which case it shall not be bound to pay for the Goods until all the Goods which were scheduled to be delivered are so delivered; or
  - 3.6.2 to reject the Goods delivered; and/or
  - 3.6.3 to cancel or vary delivery of any other Goods not yet delivered under the Agreement; and/or

- 3.6.4 to receive from the Seller reimbursement of any payments made by the Buyer for rejected or cancelled Goods less a reasonable allowance for use and all costs, losses or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods on to the due date (and time, if specified), including the cost of obtaining substitute goods from another supplier where applicable, but less any sums reimbursed by the Seller.
- 3.7 Any access to premises and any labour and equipment provided by the Buyer in connection with delivery or installation of the Goods shall be provided to the Seller without acceptance by the Buyer of any liability in respect of any actions, claims, demands, costs and expenses incurred by third parties (including any agent of the Seller) for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful acts or omission of the Buyer or any of its representatives.
- 3.8 Where the Goods are imported into the United Kingdom whether by the Seller or the Buyer, the Seller shall be responsible for complying with any legislation or regulations governing the exportation of the Goods from the country of origin and the importation of the Goods into the United Kingdom. If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the Goods by the Buyer, the Seller shall obtain it at its own expense and if required by the Buyer produce evidence on demand that it has done so. Additional expenses or charges incurred by the Buyer resulting from such failure shall be for the Seller's account.
- 3.9 In any case where goods are sold CIF or FOB or on the basis of other international trade term, the meaning of such term contained in Incoterms as in force at the date when the Agreement is made shall apply except to the extent otherwise agreed in the Agreement. Incoterms means the international rules for the interpretation of trade terms published by the International Chamber of Commerce.

#### **4 RISK AND TITLE**

- 4.1 Unless otherwise agreed in the Agreement or in Incoterms which the Parties have agreed shall apply to the supply of the Goods, risk of damage to or loss of the Goods and title to the Goods shall pass to the Buyer on delivery, except that where the Buyer makes payment before delivery, title will pass on payment for goods that have already been unconditionally appropriated to the contract and on appropriation for goods which are subsequently unconditionally appropriated; risk will pass on delivery.

#### **5 ACCEPTANCE AND REJECTION OF THE GOODS**

- 5.1 On and for a reasonable period following delivery, the Buyer shall have a reasonable opportunity to examine and test the Goods.
- 5.2 If, before acceptance, the Goods or any part of them do not in the reasonable opinion of the Buyer conform to the Specifications or are otherwise not in accordance with the warranties and undertakings given by the Seller under condition 7.2 or the implied

terms referred to in condition 7.3, the Buyer shall be entitled, without prejudice to any other rights and remedies:

- 5.2.1 to accept the Goods and receive a reduction in the price of the Goods reasonably appropriate to the diminution in value attributable to the defect:  
or
  - 5.2.2 to have the defective Goods repaired or modified by the Seller or (as the Buyer shall elect) replaced with fully conforming Goods (which the Seller undertakes to do as quickly as possible), following which the Buyer shall be entitled to examine the Goods again in accordance with condition 5.1; or
  - 5.2.3 to reject the defective Goods; and
  - 5.2.4 to cancel or vary the description, quantity or delivery dates of any remaining Goods to be delivered under the Agreement; and
  - 5.2.5 to receive from the Seller reimbursement of any payments made by the Buyer for rejected or cancelled Goods less a reasonable allowance for use and all costs, losses or expenses incurred by the Buyer which are in any way attributable to the defective and/or rejected Goods, including the cost of obtaining substitute goods from another supplier where applicable, but less any sums reimbursed by the Seller.
- 5.3 Any Goods rejected by the Buyer in accordance with this condition 5 shall be returnable to the Seller at the Seller's risk and expense.

## **6 PRICES AND TERMS OF PAYMENT**

- 6.1 The price of the Goods shall be as stated or referred to in the Order or, where no price has been stated or referred to, the price listed in the Seller's relevant published price list current at the date of the Agreement for the quantities of Goods being ordered by the Buyer.
- 6.2 Unless otherwise agreed in writing by the Buyer:
- 6.2.1 the price of the Goods shall be exclusive of value added tax or any other sales tax or duty, but inclusive of all other costs and charges including without limitation those in relation to loading, unloading, delivery, insurance and packaging and all import and export duties; and
  - 6.2.2 no variation in price nor extra charges may be imposed by the Seller, whether caused by variations in costs, fluctuations in exchange rates or otherwise.
- 6.3 Invoices shall be raised by the Seller on or after delivery to the Buyer. Payment of invoices shall be made in accordance with the Managing Public Money rules that apply to the Buyer, and within 90 days of receipt of invoice, but time of payment shall not be of the essence of the Agreement. The Seller shall not be entitled to suspend deliveries of the Goods as a result of sums being outstanding.

- 6.4 Without prejudice to any other rights or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under the Agreement or any other agreement between the Parties.

## **7 QUALITY AND LIABILITY**

- 7.1 The Seller acknowledges that precise conformity of the Goods with the Agreement is of the essence of the Agreement.

- 7.2 The Seller warrants and undertakes as a condition of the Agreement that, from delivery until 12 months from the date of acceptance, the Goods will:

- 7.2.1 be of the best available design and of the best quality material and workmanship;
- 7.2.2 conform in all respects with the Specifications;
- 7.2.3 be free from defects in design, material and workmanship;
- 7.2.4 be fit and sufficient for the purposes for which the Goods are to be used (for which purposes the Buyer relies on the skill and judgement of the Seller); and
- 7.2.5 except in so far as may otherwise be indicated by the Specifications, strictly adhere to all applicable laws and the latest relevant British Standard or relevant industry standard or equivalent, where such exist;
- 7.2.6 comply with all statutory requirements, regulations and voluntary codes of conduct relating to the Goods (and their packaging, packing and delivery) and their sale and supply;
- 7.2.7 be suitable for use in the environment in which the Buyer intends to use the Goods; and
- 7.2.8 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

- 7.3 The rights of the Buyer under these conditions are in addition to the terms implied in favour of the Buyer by the Sale of Goods Act 1979 or otherwise at law or in equity.

- 7.4 If, during the period of the warranty specified in condition 7.2, the Goods or any part of them do not in the reasonable opinion of the Buyer conform to the Specifications or are otherwise not in accordance with the warranties and undertakings given by the Seller under condition 7.2 or the implied terms referred to in condition 7.3, the Buyer shall be entitled, without prejudice to any other rights and remedies:

- 7.4.1 to accept the Goods and receive a reduction in the price of the Goods reasonably appropriate to the diminution in value attributable to the defect:  
or



- 7.4.2 to have the defective Goods repaired or modified by the Seller or (as the Buyer shall elect) replaced with fully conforming Goods (which the Seller undertakes to do as quickly as possible); or
  - 7.4.3 to return the defective Goods; and
  - 7.4.4 to cancel or vary the description, quantity or delivery dates of any remaining Goods to be delivered under the Agreement; and
  - 7.4.5 to receive from the Seller reimbursement of any payments made by the Seller for returned Goods less a reasonable allowance for use and all costs, losses or expenses incurred by the Buyer which are in any way attributable to the defective and/or returned Goods, including the cost of obtaining substitute goods from another supplier where applicable, but less any sums reimbursed by the Seller.
- 7.5 Where the Seller is not the manufacturer of the Goods, the Seller will, in addition to any liability which it might have in respect of the Goods, endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller.

## **8 INTELLECTUAL PROPERTY**

- 8.1 The Buyer authorises the Seller to use the Intellectual Property of the Buyer for the purposes only of exercising its rights and performing its obligations under the Contract. The Seller will have no other rights whatsoever in respect of the Intellectual Property of the Buyer.
- 8.2 The Seller grants to the Buyer under the Seller's Intellectual Property in the Goods a worldwide, non-exclusive, royalty-free irrevocable licence (with the right to grant sub-licences) to repair (or have repaired) the Goods and to make (or have made) parts for the Goods.
- 8.3 The Seller warrants that neither the Goods, nor their use, resale or importation, infringes the Intellectual Property of any third party except to the extent that any infringements arise from any specifications, drawings, samples or descriptions provided by the Buyer.

## **9 ANTI-BRIBERY AND ANTI-CORRUPTION**

- 9.1 The Seller shall:
- 9.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
  - 9.1.2 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;

- 9.1.3 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
- 9.1.4 promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind received by the Seller in connection with the performance of this Agreement.
- 9.2 Breach of this condition 9 shall be deemed a material breach.
- 9.3 For the purpose of this condition 9 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

## 10 **INDEMNITY AND INSURANCE**

- 10.1 The Seller shall indemnify the Buyer against all loss, damages, liability, costs and expenses awarded against or incurred by the Buyer in connection with:
  - 10.1.1 any claim made against the Buyer that the Goods infringe or that their use, resale or importation infringes the Intellectual Property of any other person;
  - 10.1.2 any recall of the Goods or any products incorporating or sold together with the Goods, which is directly or indirectly due to a defect in the Goods; and
  - 10.1.3 any breach by the Seller of the terms of the Agreement,provided that the Seller shall have no liability to indemnify the Buyer to the extent that any such liability arises from a breach of the Agreement by the Buyer or from work required to be done on or to the Goods or their packaging in accordance with the designs or specifications of the Buyer.
- 10.2 The Seller shall throughout the period of the Agreement maintain with a reputable insurance company at its own cost:
  - 10.2.1 employer's liability insurance in accordance with any legal requirement for the time being in force; and
  - 10.2.2 a comprehensive policy or policies of professional indemnity and other insurance providing an adequate level of cover in respect of all insurable liability which may be incurred by the Seller under the Agreement, including (without limitation) in respect of death or personal injury, or loss of or damage to property, intellectual property infringement and product liability.

The terms of any insurance policy or the amount of the cover shall not relieve the Seller of any liabilities under the Agreement. It shall be the responsibility of the Seller

to determine the amount of insurance cover that will be adequate to enable the Seller to satisfy any liability referred to in condition 10.2.2.

- 10.3 The Seller shall produce to the Buyer on request copies of all insurance policies referred to in condition 10.2 or other evidence confirming the existence and extent of cover given by those policies, together with receipts or other evidence of payment of the premiums due under those policies.

## **11 CONFIDENTIALITY**

- 11.1 The Seller shall use the Confidential information only for the proper performance of its duties under the Agreement and shall not without the Buyer's prior written consent disclose or permit the disclosure of such information except in confidence for the proper performance of its duties under the Agreement to those of its employees, officers and professional advisers who need to have access to it.
- 11.2 The provisions of this condition 11 shall not apply to Confidential Information which: (i) the receiving party can prove was known to the receiving party before receipt; (ii) is in or enters the public domain through no wrongful default by or on behalf of the receiving party with effect from the date when that information enters the public domain; (iii) was received from a third party without obligations of confidence owed directly or indirectly to the disclosing party; or (iv) is required to be disclosed in order to comply with applicable law, to the extent of the required disclosure.
- 11.3 If the receiving Party has reasonable grounds to believe that the disclosing Party is involved in activity that constitutes an offence under the Bribery Act 2010, it may disclose relevant Confidential Information to the Serious Fraud Office (or other relevant government body) without informing the disclosing Party of such disclosure.
- 11.4 Within three (3) days of receipt of a request to do so made at any time and in any event if the Agreement is terminated, the Seller shall promptly return or destroy (at the option of the Buyer) all such Confidential Information.

## **12 DATA PROTECTION**

- 12.1 Each Party shall comply with its respective obligations under Applicable Data Protection Law and shall not do or omit to do anything which would cause the other Party to breach Applicable Data Protection Law.
- 12.2 It is not envisaged or intended that any personal data will be transferred between the Parties or processed under this Agreement. However, to the extent that any personal data is processed by the Seller under this Agreement, the Seller shall:
- 12.2.1 process the personal data only in accordance with this Agreement and the Buyer's lawful instructions;
  - 12.2.2 implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;

- 12.2.3 only permit the personal data to be processed by persons who are bound by enforceable obligations of confidentiality;
  - 12.2.4 remain entitled to appoint third party sub-processors. Where the Seller appoints a third party sub-processor, it shall, with respect to data protection obligations: (i) ensure that the third party is subject to, and contractually bound by, at least the same obligations as Seller; and (ii) remain fully liable to the Buyer for all acts and omissions of the third party;
  - 12.2.5 not transfer or otherwise process the personal data outside the European Economic Area ("EEA") without obtaining the Buyer's prior written consent;
  - 12.2.6 where consent is granted under condition 12.2.5, the Seller may only process, or permit the processing, of the personal data outside the EEA under the following conditions: (i) the territory has the benefit of a European Commission finding that it provides adequate protection for the privacy rights of individuals; or (ii) the Seller has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available; or (iii) the transfer otherwise complies with Applicable Data Protection Law;
  - 12.2.7 notify the Buyer without delay after becoming aware that it has suffered a personal data breach;
  - 12.2.8 at the Buyer's cost, permit the Buyer (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Seller's data processing activities to enable the Buyer to verify and/or procure that the Seller is complying with its obligations under this condition 12;
  - 12.2.9 assist the Buyer in responding to requests from data subjects who are exercising their rights under Applicable Data Protection Law;
  - 12.2.10 assist the Buyer in complying with its obligations pursuant to Articles 32-36 of the GDPR (or such corresponding provisions of Applicable Data Protection Law), comprising (if applicable): (i) notifying a supervisory authority that the Buyer has suffered a personal data breach; (ii) communicating a personal data breach to an affected individual; (iii) carrying out an impact assessment; and (iv) where required under an impact assessment, engaging in prior consultation with a supervisory authority; and
  - 12.2.11 unless applicable law requires otherwise, upon termination of this Agreement delete all personal data provided by the Buyer to the Seller.
- 12.3 Each Party acknowledges that the factual description of the subject-matter, duration of the processing, the nature and purpose of the processing, the type of personal data and the categories of data subjects shall be as set out in this Agreement. To the extent that the foregoing is not set out in this Agreement, the Parties shall keep a separate record of the relevant particulars.

## 13 TERMINATION

- 13.1 The Agreement may be terminated immediately by the Buyer on written notice to the Seller, without prejudice to any other rights or remedies of the Buyer:
- 13.1.1 if the Seller is in material breach of an obligation under this Agreement and in the case of any breach capable of remedy has failed to remedy the breach within a period of 30 days after receipt of written notice to do so;
  - 13.1.2 if the Seller is dissolved or struck off the register of companies maintained by Companies House or a winding up order is made against the Seller or a meeting is convened, resolution passed or any step taken by the Seller with a view to the winding-up of the Seller except for the purpose of a solvent reconstruction, reorganisation, merger or consolidation;
  - 13.1.3 if a receiver (including fixed charge or court appointed), administrative receiver, manager, insolvency practitioner or similar officer shall be appointed over the whole or a substantial part of the undertaking, property or assets of the Seller;
  - 13.1.4 if the Seller is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 13.1.5 if the Seller enters into (or proposes to enter into) a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise or a moratorium is agreed imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the Seller;
  - 13.1.6 if notice of intention to appoint an administrator is given by any person (including the Seller's directors, the Seller or any qualifying floating charge holder as defined in the Insolvency Act 1986) or any step is taken by any person with a view to placing the Seller into administration as defined by the Insolvency Act 1986; or
  - 13.1.7 if any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed in the above sub-conditions in relation to the Seller.
- 13.2 Termination or expiry of this Agreement for any reason, whether under this condition 13 or not, shall be without prejudice to the accrued rights and liabilities of the Buyer on the date of such termination or expiry.
- 13.3 For the purposes of this condition, a breach shall be considered capable of remedy:
- 13.3.1 if the Party in breach can comply with the provision in question in all respects other than as to the time of performance and
  - 13.3.2 if time of performance is not of the essence.

## **14 GENERAL**

### **14.1 Subcontracting and Assignment**

- 14.1.1 The Seller may not sub-contract to any other person the performance any of the obligations undertaken by it or the exercise any of the rights granted to it.
- 14.1.2 The Seller may not, without the prior written consent of the Buyer, assign, transfer (in whole or in part) or charge or deal in any manner with this Agreement or the benefit or burden of or the rights under this Agreement.
- 14.1.3 The Buyer may, without the consent of the Seller, assign, transfer (in whole or in part), charge and deal in any manner with this Agreement and the benefit or burden of or the rights under this Agreement.

### **14.2 Force Majeure**

- 14.2.1 Provided that it has complied with the provisions of condition 14.2.2 neither Party shall be liable to the other Party for any delay or non-performance of its obligations under the Agreement to the extent that its performance is interrupted or prevented by Force Majeure the effects of which it could not reasonably have avoided.
- 14.2.2 If a Party's performance is affected as set out in condition 14.2.1, it will give written notice to the other Party as soon as reasonably practicable after becoming aware of the relevant circumstances and will use best endeavours to bring the relevant circumstances to an end and to mitigate the effects of the circumstances.
- 14.2.3 For so long as the Seller's performance is affected as set out in condition 14.2.1, the Buyer shall be entitled to obtain the Goods or equivalent goods elsewhere and to reduce the quantity of Goods ordered under the Agreement accordingly.

### **14.3 Amendments**

No amendment of the Agreement shall be effective unless it is in writing and signed by or on behalf of each of the Parties.

### **14.4 Waivers and Remedies**

- 14.4.1 Except as otherwise stated in the Agreement, the rights and remedies of each Party under the Agreement are in addition to and not exclusive of any other rights or remedies under the Agreement or the general law and may be waived only in writing and specifically.
- 14.4.2 Delay in exercising or non-exercise of any right under the Agreement is not a waiver of that or any other right.

14.4.3 Partial exercise of any right under the Agreement shall not preclude any further or other exercise of that right or any other right under the Agreement.

14.4.4 Waiver of a breach of any term of the Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

#### **14.5 Time for payment under Indemnities**

The Seller shall be liable to make payment under any indemnity given by it on demand from the time when the liability being indemnified is incurred by the Buyer, whether or not the Buyer has satisfied or discharged the liability.

#### **14.6 Severance**

If any provision of the Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability in that jurisdiction of any other provision of the Agreement or the legality, validity or enforceability in any other jurisdiction of that or any other provision of the Agreement.

#### **14.7 Entire Agreement**

14.7.1 The Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement and supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the Parties relating to such subject matter.

14.7.2 Each Party acknowledges to the other that it has not been induced to enter into the Agreement by nor has it relied upon any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of the other Party or any other person save for those contained in the Agreement. Accordingly, each of the Parties acknowledges and agrees that the only remedy available to it in respect of the subject matter of the Agreement shall be for breach of contract under the terms of the Agreement and it shall have no right of action against any other Party in respect of any such representation, promise, assurance, warranty or undertaking.

14.7.3 This condition shall not exclude any liability which either Party would otherwise have to the other or any right which either of them may have to rescind the Agreement in respect of any statements made fraudulently by the other prior to the execution of the Agreement or any rights which either of them may have in respect of fraudulent concealment by the other.

#### **14.8 Survival Of Obligations**

Notwithstanding any provision of the Agreement to the contrary, the provisions of conditions 7, 8, 10, 11 and 14 and any other conditions which expressly or impliedly

survive expiry or termination of the Agreement for any reason whatsoever shall continue in full force and effect after expiry or termination.

#### **14.9 No Partnership/Agency**

Nothing in the Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

#### **14.10 Rights of Third Parties**

A person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

#### **14.11 Notices**

14.11.1 All notices between the Parties with respect to the Agreement shall be in writing and signed by or on behalf of the Party giving it. Any notice shall be duly served (i) on delivery if delivered by hand, (ii) 48 hours after sending if sent by first class post or special or recorded delivery (or other “proof of delivery” or “proof of posting” service that Royal Mail may from time to time offer) or (iii) on sending if sent by fax or email (provided that a copy is also sent by post), provided that in each case the notice is sent to the address of the addressee given at the start of the Agreement or such other address as the addressee may from time to time have notified for the purpose of this condition.

14.11.2 Any notice or communication given under the Agreement shall not be validly served if sent by text messaging via mobile phone.

#### **14.12 Governing Law**

The Agreement and any dispute or claim arising out of or in connection with it (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of England and Wales.

#### **14.13 Jurisdiction**

In relation to any legal action or proceedings (a) arising out of or in connection with the Agreement or its implementation or effect or (b) relating to any non-contractual obligations arising out of or in connection with the Agreement, each of the Parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.