

**DATED**

**(1) <<Supplier>>**

**(2) <<Buyer>>**

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**LONG TERM SUPPLY OF GOODS AGREEMENT**

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**THIS AGREEMENT** is made the                    day of

**BETWEEN:**

- (1) <<Name of Supplier>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of] <<insert Address>> (“the Supplier”) and
- (2) <<Name of Buyer>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of] <<insert Address>> (“the Buyer”)

**WHEREAS:**

- (1) The Supplier carries on the business of [manufacturing and] selling the Goods.
- (2) The Buyer carries on the business of manufacturing and selling Finished Goods, and wishes to purchase the Goods from the Supplier for that business.
- (3) The Supplier is willing to supply the Goods to the Buyer on the terms set out in this Agreement.

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

- “Business Day”** means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in <<insert location>>;
- “Commencement Date”** means <<insert date>>;
- “Confidential Information”** means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium) which is by its nature confidential or is expressly stated to be confidential or marked as such;
- “Expert”** means an independent and suitably qualified third party to whom a reference is made under Clause 8;
- “Finished Goods”** means the Goods listed in Schedule 3;
- “Goods”** means the Goods to be supplied by the Supplier detailed in Schedule 1;

<b>“Quarter”</b>	means the period of three months commencing on <<insert date>>, each consecutive period of three months thereafter and any shorter period commencing on a day following the end of the Quarter and ending on the termination of this Agreement and “Quarterly” has a corresponding meaning;
<b>“Rejection Notice”</b>	means a notice provided by the Buyer to the Supplier under Clause 6 upon receipt of defective Goods, specifying the alleged defect(s) and stating that the Buyer rejects the defective Goods;
<b>“Specification”</b>	means the specification of the Goods set out in Schedule 2 or any other specification of the Goods agreed in writing between the Supplier and the Buyer from time to time; and
<b>“Year”</b>	means the period of 12 months from the date of this Agreement and each consecutive period of 12 months thereafter during the period of this Agreement.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
  - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
  - 1.2.4 a Schedule is a schedule to this Agreement;
  - 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule;
  - 1.2.6 a “Party” or the “Parties” refer to the parties to this Agreement; and
  - 1.2.7 a reference to the “Supplier” or to the “Buyer” shall also refer to any officers, employees, agents or subcontractors of that Party.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

## 2. **Supply of the Goods**

- 2.1 Subject to the provisions of this Clause 2 the Supplier shall accept orders from the Buyer to buy the Goods from the start of business on the Commencement Date.
- 2.2 Every order shall allow the Supplier no less than <<insert period, e.g. 1 Quarter>> of lead-time between receipt of the order and the delivery date, such date to be specified by the Buyer in each order.

- 2.3 During the continuance of this Agreement the Supplier shall sell and the Buyer shall purchase such quantities of the Goods as may be ordered by the Buyer from time to time under sub-Clause 2.4, subject to the terms and conditions of this Agreement.
- 2.4 The Buyer shall, not less than <<insert period>> Business Days before the beginning of each Quarter, give the Supplier its order for the Goods to be delivered to the Buyer during that Quarter; each order so given shall be final, except that the Supplier may at its discretion accept amendment to an order made by the Buyer within <<insert period>> Business Days after the order is given.
- 2.5 Orders for the Goods shall be given by the Buyer to the Supplier in writing or, if given orally, shall be confirmed by the Buyer in writing not more than <<insert period>> Business Days after the order is given by the Buyer.
- 2.6 The Buyer shall notify to the Supplier in writing:
- 2.6.1 its estimated orders for the Goods for each Year, not less than <<insert period>> months prior to that Year;
- 2.6.2 its estimated orders for the Goods for each Quarter, not less than <<insert period>> weeks prior to that Quarter; and
- 2.6.3 any revisions to those such estimates, immediately after they are made.
- 2.7 If the Buyer's orders for the Goods exceed (or it appears from any estimate or revised estimates given pursuant to sub-Clause 2.6 that they will exceed) the output capacity or available stocks of the Supplier:
- 2.7.1 the Supplier shall as soon as practicable notify the Buyer;
- 2.7.2 the Buyer shall be entitled to obtain from any other person such quantity of the Goods as the Supplier is unable to supply in accordance with the Buyer's orders; and
- 2.7.3 that quantity shall be deemed for the purposes only of sub-Clause 2.3 (and, therefore, to the effect that the Supplier shall not be deemed to be in breach of this Agreement for failing to supply under that sub-Clause) to have been ordered from the Supplier, until such time as:
- 2.7.3.1 the Supplier has given the Buyer written notice (together with such supporting evidence as the Buyer may reasonably require) that it is able to resume the supply of that quantity in accordance with the Buyer's orders; and
- 2.7.3.2 the Buyer has had a reasonable time to terminate any alternative arrangements that it may have made with any other party for the supply of that quantity.
- 2.8 The Supplier shall not be deemed to be in breach of this Agreement where sub-Clause 2.7 applies provided that it complies with sub-Clause 2.7.1. The Supplier shall not be liable in any way for the Buyer's inability or failure to obtain alternative goods from an alternative source. When the Supplier is once again able to supply the quantities of Goods required by the Buyer it shall notify the Buyer as soon as is reasonably practicable.

### 3. Conditions of Sale

- 3.1 The Buyer shall only use the Goods sold to it by the Supplier in the

manufacture of Finished Goods and, without prejudice to the generality of the preceding words, the Buyer shall not resell any of the Goods in bulk.

3.2 <<Add further conditions as required>>.

#### 4. **Specification of the Goods**

4.1 All Goods sold by the Supplier to the Buyer pursuant to this Agreement shall conform in all respects to the Specification; and the Buyer shall be entitled to reject any quantity of the Goods which is not in accordance with the Specification, subject to and in accordance with the provisions of Clause 6.

4.2 [Any quantity of the Goods supplied by the Supplier pursuant to this Agreement shall be deemed not to comply with the Specification to which it is ordered if the Goods are not capable of producing, by using normal commercial manufacturing techniques, Finished Goods of equivalent specification to Finished Goods produced by using those techniques from Goods supplied by other suppliers.]

4.3 The Supplier shall consult with the Buyer from time to time during the continuance of this Agreement in order to ensure that the Specification of the Goods to be sold by the Supplier to the Buyer is acceptable to both Parties, but the Supplier shall not be obliged to agree to any change to the Specification requested by the Buyer.

#### 5. **Manufacture and Delivery of the Goods**

5.1 The Supplier shall use all reasonable endeavours to manufacture and maintain sufficient stocks of the Goods to fulfil its obligations under this Agreement.

5.2 The Supplier shall use all reasonable endeavours to deliver each of the Buyer's orders for the Goods on the date specified in the relevant order or where no date is specified by the Buyer, within a reasonable time of the order, but the time of delivery shall not be of the essence and if, despite those endeavours, the Supplier is unable for any reason to fulfil any delivery of the Goods on the specified date or where no date is specified by the Buyer, within a reasonable time of the order, the Supplier shall not be deemed to be in breach of this Agreement or have any liability to the Buyer unless and until the Buyer has given <<insert period>> Business Days' written notice to the Supplier requiring the delivery to be made and the Supplier has not fulfilled the delivery within that period.

5.3 The Supplier shall, at the Buyer's request, arrange for suitable transport from the Supplier's premises at <<insert address>> to the Buyer's premises at <<insert address>> (or such other premises as the Buyer may notify to the Supplier from time to time) and arrange insurance therefor, in which case the costs of transport and insurance shall be borne by the Customer.

5.4 Whether or not the Supplier arranges transport pursuant to sub-Clause 5.3:

5.4.1 delivery of the Goods shall take place at the Supplier's premises at <<insert address>>; and

5.4.2 risk in, responsibility for, and title to the Goods shall pass to the Buyer once they are loaded on to transport at the Supplier's premises.

## 6. Defective Goods

- 6.1 The Buyer shall, within <<insert period>> Business Days of the arrival of each delivery of the Goods at the Buyer's premises, submit a Rejection Notice to the Supplier specifying any defect by reason of which the Buyer alleges that the Goods delivered are not in accordance with the Specification and which should be apparent on reasonable inspection.
- 6.2 If the Buyer fails to give such Rejection Notice then, except in respect of any defect which is not one which would be apparent on reasonable inspection, the Goods shall be conclusively presumed to be in all respects in accordance with the Specification, and accordingly the Buyer shall be deemed to have accepted the delivery of the Goods in question and the Supplier shall have no liability to the Buyer with respect to that delivery.
- 6.3 If the Buyer gives such Rejection Notice in respect of any delivery of the Goods which are not in accordance with the Specification, the Supplier shall within <<insert period>> Business Days of being requested to do so by the Buyer:
- 6.3.1 supply replacement Goods which are in accordance with the Specification (in which event the Supplier shall not be deemed to be in breach of this Agreement or have any liability to the Buyer); or
- 6.3.2 notify the Buyer that it is unable to do so, whereupon (without prejudice to sub-Clause 13.4) the Buyer shall be entitled to obtain from any other party such quantity of the Goods as the Supplier has been unable so to supply.
- 6.4 If there is any difference of opinion between the Parties as to whether any Goods supplied by the Supplier are in accordance with the Specification the matter shall, at the request of either the Supplier or the Buyer, be determined by an Expert.
- 6.5 Nothing in this Clause 6 shall exclude any liability of the Supplier to the Buyer under any other provisions of this Agreement for damage caused by a defect for which the Supplier is liable under Section 2 of the Consumer Protection Act 1987).

## 7. Price and Payment

- 7.1 Subject to the following provisions of this Clause 7, the price for each type of Goods shall be the Supplier's ex-factory price for those Goods.
- 7.2 The Supplier shall be entitled to increase its ex-factory prices for the Goods at the end of each Year, or more frequently if and to the extent that the Supplier, in its sole discretion, considers the same to be justified by any material increase in the prices of raw materials used by the Supplier in the manufacture of the Goods, and the Supplier shall promptly notify the Buyer of any such increase.
- 7.3 The Supplier shall be entitled to increase the price for the Goods to cover extra expense resulting from the Buyer's instructions or lack of instructions.
- 7.4 The price for the Goods shall be exclusive of:
- 7.4.1 any costs of packaging, carriage and insurance of the Goods; and
- 7.4.2 any value added tax or other applicable tax, or duty, which shall be added to the sum in question.

- 7.5 The Supplier shall invoice the Buyer by the <<insert day>> day of each Quarter for the price in respect of all deliveries of the Goods made under this Agreement during the previous Quarter, and the Buyer shall pay the sums shown to be due by <<insert preferred method(s)>>, to such bank account as the Supplier may from time to time nominate, within <<insert period>> Business Days from the date on which each invoice is submitted by the Supplier.
- 7.6 If either Party fails to pay on the due date any amount which is payable to the other Party under this Agreement then, without prejudice to any other right or remedy of the other Party:
- 7.6.1 that amount shall bear interest from the due date until payment is made in full at a rate of <<insert percentage>>% per cent above the <<insert bank name>> base rate, both before and after any judgment; and
- 7.6.2 in the case of an outstanding amount due and payable from the Buyer, the Supplier shall be entitled to suspend deliveries of the Goods until the outstanding amount has been received by the Supplier from the Buyer.

## 8. Expert Determination

- 8.1 Where under sub-Clause 6.4 any matter is to be determined by an Expert, the matter shall be referred at the instance of either Party to <<insert name of independent third party>> or, if he/she is unable or unwilling so to act, such person as may be appointed by agreement between the Parties or, in default of agreement, nominated on the application of either party by the President for the time being of <<insert name of relevant authority or association>>.
- 8.2 Any Expert to whom a reference is made under sub-Clause 8.1 shall act as an expert and not as an arbitrator and shall be entitled to appoint such technical expert or experts as he/she considers necessary to assist him/her in determining the matter referred to him/her. The decision of the Expert (which shall be given by him/her in writing stating the reasons therefor) shall be final and binding on the Parties.
- 8.3 Each Party shall provide any Expert with such information as he/she may reasonably require for the purposes of his/her determination; if either Party claims any such information to be confidential to it then, provided that in the opinion of the Expert that Party has properly claimed the same as confidential, the Expert shall not disclose the same to the other Party or to any third party.
- 8.4 The costs of any Expert (including the costs of any technical expert(s) appointed by him/her) shall be borne in such proportion as the Expert may determine to be fair and reasonable in all the circumstances, or, if the Expert makes no such determination, by the Parties in equal proportions.

## 9. Confidentiality

- 9.1 Each Party undertakes that, except as provided by sub-Clause 9.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and [for <<insert period>> years] after its termination:

- 9.1.1 keep confidential all Confidential Information;
  - 9.1.2 not disclose any Confidential Information to any other party;
  - 9.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;
  - 9.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
  - 9.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 9.1.1 to 9.1.4 above.
- 9.2 Either Party may:
- 9.2.1 disclose any Confidential Information to:
    - 9.2.1.1 any sub-contractor or supplier of that Party;
    - 9.2.1.2 any governmental or other authority or regulatory body; or
    - 9.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;to such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the supply of the Goods), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 9.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 9, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
  - 9.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.
- 9.3 The provisions of this Clause 9 shall continue in force in accordance with their terms [indefinitely] OR [for a period of <<insert period>> years after termination], notwithstanding the termination of this Agreement for any reason.

## 10. Indemnity

- 10.1 The Supplier shall indemnify the Buyer against all actions, proceedings, claims, demands, costs, awards, losses or damages howsoever arising, as a result of any claim made by a third party against the Buyer or the Supplier (save to the extent that such a claim is attributable to any acts or omissions of the Buyer, its employees, agents or subcontractors):
  - 10.1.1 for the infringement of intellectual property rights arising out of, or in connection with, the Goods; or



- 10.1.2 in relation to the Goods arising out of, or in connection with, the Supplier's breach, negligence or failure or delay in the performance of its obligations under this Agreement; or
- 10.1.3 for death or personal injury or for damage to property arising out of, or in connection with, any defects in the Goods (only to the extent that such defects are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors), and "defects in Goods" in this Clause 10.1.3 means any Goods supplied by the Supplier which either do not conform to the Specification or which are defective within the meaning of Section 3 of the Consumer Protection Act 1987.
- 10.2 The indemnity set out in sub-Clause 10.1 shall apply provided that:
- 10.2.1 the Buyer gives written notice to the Supplier of any claim or proceeding as soon as is reasonably possible following receipt of it;
- 10.2.2 the Buyer makes no admission of liability, agreement or compromise and gives the Supplier sole authority to defend or settle the claim or proceedings at the Supplier's cost and expense; and
- 10.2.3 the Buyer gives the Supplier all reasonable information, access and assistance in connection with any such claims or proceedings at the Supplier's cost and expense.
- 10.3 The Buyer shall indemnify the Supplier against all actions, proceedings, claims, demands, costs, awards, losses or damages howsoever arising, as a result of any claim made by a third party against the Buyer or the Supplier for the infringement of intellectual property rights arising out of, or in connection with, the Goods to the extent that such a claim is attributable to the Buyer, its employees, agents or subcontractors' use of any name, brand, logo, or trade mark (registered or otherwise) or other identifier in relation to the Goods which in any way differs from, is additional to, or in place of that applied to the Goods supplied to the Buyer by the Supplier.
- 10.4 The indemnity set out in sub-Clause 10.3 shall apply provided that:
- 10.4.1 the Supplier gives written notice to the Buyer of any claim or proceeding as soon as is reasonably possible following receipt of it;
- 10.4.2 the Supplier makes no admission of liability, agreement or compromise and gives the Buyer sole authority to defend or settle the claim or proceedings at the Buyer's cost and expense; and
- 10.4.3 the Supplier gives the Buyer all reasonable information, access and assistance in connection with any such claims or proceedings at the Buyer's cost and expense.
- 10.5 Notwithstanding the provisions of sub-Clause 10.2.2, the Buyer may nevertheless settle a claim without the Supplier's involvement or consent (but subject to giving the Supplier prior written notice of the terms of any such settlement) if it reasonably believes that failure to do so would be in any material way prejudicial to it.
- 10.6 Notwithstanding the provisions of sub-Clause 10.4.2, the Supplier may nevertheless settle a claim without the Buyer's involvement or consent (but subject to giving the Buyer prior written notice of the terms of any such settlement) if it reasonably believes that failure to do so would be in any material way prejudicial to it.
- 10.7 Nothing in this Clause 10 shall restrict the either Party's general duty at law to mitigate losses that it may suffer or incur as a result of any matters that may

give rise to a claim under this Clause 10.

## 11. **Limitation of Liability**

- 11.1 This Clause 11 sets out the entire financial liability of the Parties (including that for the acts or omissions of their employees, agents or subcontractors) to each other for any breach of this Agreement; any use or resale made by the Buyer of the Goods; and any representation, statement or tortious act or omission (including, but not limited to, negligence and breach of statutory duty) arising out of or in connection with this Agreement.
- 11.2 Subject to sub-Clause 11.3, neither Party shall be liable to the other, whether in contract, tort (including negligence), restitution, or for breach of statutory duty or misrepresentation for any loss of profit, loss of goodwill, loss of business opportunity, loss of anticipated saving, loss or corruption of any data or information, or any special, indirect or consequential damage or loss that may be suffered by the other Party that arises out of or in connection with this Agreement.
- 11.3 Nothing in this Agreement shall limit the liability of either Party to the other for fraud or fraudulent misrepresentation, [for deliberate default or wilful misconduct,] or for death or personal injury arising out of negligence.
- 11.4 Nothing in this Agreement shall limit the liability of either Party to the other for breach of the terms implied by Section 12 of the Sale of Goods Act 1979 or for breach of Section 2 of the Consumer Protection Act 1987.
- 11.5 Nothing in this Agreement shall exclude or limit the liability of either Party under or in respect of any of the indemnity provisions of Clause 10.
- 11.6 Without prejudice to Clause 10 or to sub-Clauses 11.2, 11.3 or 11.4, the total liability of the Supplier arising out of or in connection with this Agreement (whether in contract, tort (including negligence), restitution, for breach of statutory duty or misrepresentation or otherwise) shall be limited to £<<insert sum>> in respect of any and all other acts or omissions occurring in each Year.
- 11.7 Without prejudice to Clause 10 or to sub-Clause 11.2, 11.3 or 11.4, the total liability of the Buyer arising out of or in connection with this Agreement (whether in contract, tort (including negligence), restitution, for breach of statutory duty or misrepresentation or otherwise) shall be limited, in the case of unpaid invoices, to the sum outstanding together with any interest due under sub-Clause 7.6.1, and in in respect of any and all other acts or omissions occurring in each Year, to the sum of £<<insert sum>> for that Year.

## 12. **Force Majeure**

- 12.1 No Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action (except where such action has been induced by the Party so incapacitated), civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

- 12.2 [In the event that a Party to this Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of <<insert period>>, the other Party may at its discretion terminate this Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for any and all Goods delivered but not already paid for. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of this Agreement.]

### 13. Term and Termination

- 13.1 This Agreement shall come into force on the Commencement Date and shall continue for a Term of <<insert Term>> from that date, subject to the provisions of this Clause 13.
- 13.2 Either Party shall have the right, exercisable by giving not less than <<insert notice period>> written notice to the other at any time prior to the expiry of the term specified in sub-Clause 13.1 (or any further period for which this Agreement has been extended pursuant to this provision) to extend this Agreement for a further period of <<insert period>>.
- 13.3 Either Party may terminate this Agreement by giving to the other not less than <<insert notice period>> written notice, to expire on or at any time after <<insert minimum term of agreement>>.
- 13.4 Either Party may immediately terminate this Agreement by giving written notice to the other Party if:
- 13.4.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within <<insert period>> Business Days of the due date for payment;
- 13.4.2 the other Party commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within <<insert period>> Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
- 13.4.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
- 13.4.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- 13.4.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);
- 13.4.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
- 13.4.7 that other Party ceases, or threatens to cease, to carry on business; or
- 13.4.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of this

Agreement. For the purposes of this Clause 13, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

13.5 For the purposes of sub-Clause 13.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

13.6 The rights to terminate this Agreement given by this Clause 13 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

#### 14. **Effects of Termination**

Upon the termination of this Agreement for any reason:

14.1 any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable;

14.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain in full force and effect;

14.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination;

14.4 subject as provided in this Clause 14 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and

14.5 each Party shall (except to the extent referred to in Clause 9) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

#### 15. **No Waiver**

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

#### 16. **Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

#### 17. **Costs**

Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

18. **Set-Off**

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this Agreement or any other agreement at any time.

19. **Assignment and Sub-Contracting**

19.1 [Subject to sub-Clause 19.2] This Agreement is personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

19.2 [The Supplier shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of the Supplier.]

20. **Relationship of the Parties**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

21. **Non-Solicitation**

21.1 Neither Party shall, for the term of this Agreement and for a period of <<insert period>> after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to this Agreement [without the express written consent of that Party].

21.2 Neither Party shall, for the term of this Agreement and for a period of <<insert period>> after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party [without the express written consent of that Party].

22. **Third Party Rights**

No part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

23. **Notices**

23.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

23.2 Notices shall be deemed to have been duly given:

23.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

23.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

23.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

23.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## 24. **Entire Agreement**

24.1 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

24.2 Each Party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, warranty, assurance or other provision (made innocently or negligently) except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## 25. **Counterparts**

This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

## 26. **Severance**

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

## 27. **Dispute Resolution**

27.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

27.2 [If negotiations under sub-Clause 27.1 do not resolve the matter within <<insert period>> of receipt of a written invitation to negotiate, the Parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.]

27.3 [If the ADR procedure under sub-Clause 27.2 does not resolve the matter

within <<insert period>> of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.

- 27.4 The seat of the arbitration under sub-Clause 27.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.]
- 27.5 Nothing in this Clause 27 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 27.6 Nothing in this Clause 27 shall prohibit either Party from referring relevant matters for Expert determination under Clause 8.
- 27.7 The Parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 27 shall [not] be final and binding on both Parties.

## 28. Law and Jurisdiction

- 28.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 28.2 Subject to the provisions of Clauses 8 and 27, any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

SIGNED for and on behalf of the Supplier by:  
<<Name and Title of person signing for the Supplier>>

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Authorised Signature

Date: \_\_\_\_\_

SIGNED for and on behalf of the Buyer by:  
<<Name and Title of person signing for the Buyer>>

---

Authorised Signature

Date: \_\_\_\_\_

DRAFT



## SCHEDULE 1

### The Goods

<<insert details>>

DRAFT

## SCHEDULE 2

**The Specification**  
<<insert details>>

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### SCHEDULE 3

**The Finished Goods**  
<<insert details>>

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