1. Definitions

“Business Days” means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

“Buyer” means a customer of the Seller.

“Conditions” means the terms and conditions for the sale of goods or the supply of services or both.

“Contract” means a binding contract for the sale of goods or the supply of services or both. “Contract” means the contract between the Seller and the Buyer in accordance with these Conditions in connection with a Contract for the performance of the Seller’s obligations. “Contract” means the contract between the Seller and the Buyer in accordance with these Conditions in connection with a Contract for the performance of the Seller’s obligations.

“Emergency Call-out” means the call-out service for emergency breakdowns of the Buyer’s plant or equipment provided by the Seller to the Buyer in accordance with the Services Conditions in connection with a Contract for the performance of the Seller’s obligations.

“Force Majeure Event” means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether or not occurring in the USA where the work is to be carried out by the Seller or any other party), failure of a utility service or transport network, act of God, pandemic or epidemic, war, riot, terrorism, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, default of suppliers or subcontractors.

“Goods” means the goods agreed to be sold to the Buyer by the Seller as detailed in the Order Acknowledgment.

“Intellectual Property Rights” means all copyright, database rights, semi-conductor topography rights, design rights, trade marks, trade names, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world.

“Losses” means:

(a) any indirect, special or consequential loss or damage; or
(b) loss of or damage to equipment or property; or
(c) economic loss or damage; or
(d) incurrence of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
(e) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill.

“Seller” means Spirax Sarco Limited.

“Services” means the services agreed to be supplied to the Seller by the Buyer as detailed in the Order Acknowledgment.

“Specification for Goods” means the specification for the Goods that is agreed in writing by the Seller and the Buyer.

“Specification for Services” means the specification for the Services that is agreed in writing by the Seller and the Buyer.

2. Interpretation of the Conditions

Interpretation of Conditions

(a) The Uniform Law on International Sales, the United Nations Convention on Contracts for the International Sale of Goods and the international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (INCOTERMS) shall be excluded. The construction, validity and performance of all Contracts shall be governed by English law and, without prejudice to the right of the Seller to take action against the Buyer in any other court of competent jurisdiction, any dispute arising from or concerning the Contracts shall be subject to the exclusive jurisdiction of and be determined by the courts of England. The taking of proceedings in any one or more jurisdiction shall not 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.

(b) The complete or partial invalidity or unenforceability of any provision in a Contract shall in no way affect the validity or enforceability of the remaining provisions in a Contract. Any such provision shall be deemed to be modified to the minimum extent necessary to make it valid or enforceable. If such modification is not possible, the relevant provision shall be deemed modified subject to such consequential modification as may be necessary for the purpose of such severance.

(c) The headings used herein are for convenience only and shall not affect construction.

(d) Words in the singular include the plural and in the plural include the singular.

(e) Reference to a Condition is to a Condition of these Conditions unless the context requires otherwise.

3. Formation of Contracts and Application of Terms and Conditions

Formation of Contracts

(a) All Contracts shall be deemed to incorporate these Conditions.

(b) Any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Seller and any variation of a Contract shall have no effect unless it is in writing and signed by the Seller and the Buyer or their authorised representatives.

(c) A prospective Buyer shall place its order for goods or services (or both) by completing the Seller’s purchase order standard form, if applicable, or by submitting its own purchase order form (in either case, such form is the “Purchase Order”). Subject to confirmation of the quotation at any time by the Seller in writing and confirmed in the Order Acknowledgment, the Seller will charge the Buyer the full cost of carriage. The Seller may increase the price of the Goods by giving notice to the Buyer, without any request by a Buyer to change the delivery date(s), quantities or quality of the Goods or failure by the Buyer to the give the Seller adequate or clear instructions or quotation at any time by the Seller in writing and confirmed in the Order Acknowledgment, the Seller will charge the Buyer the full cost of carriage.

(d) The Seller will use reasonable endeavours to meet any stated or estimated delivery date. If no date for delivery is specified, delivery shall be within a reasonable time.

4. Quotations and Purchase Orders

Quotations

(a) Any quotation issued by the Seller shall not constitute an offer and is given on the basis that no Contract shall come into existence unless and until the terms and conditions hereof are as set forth. Any despatches of Goods or quotations are not binding and shall be delivered on the basis of the quotation and before the Contract is formed. In the event that the Seller changes the price of any of the goods or services (or both) offered for sale or supply, any existing quotation in respect of those goods or services (or both) shall be deemed to be automatically withdrawn and the Seller shall issue a new quotation to the prospective Buyer.

(b) All Purchase Orders placed by a prospective Buyer shall be placed by fax, post or e-mail, or, where agreed in advance in writing by the Seller, by telephone or Seller’s electronic system for prospective Buyers to place orders and make payments.

SALE OF GOODS

5. The Goods

Means of Delivery

(a) The Goods are described in the Specification for Goods. The Seller shall comply with the Specification for Goods. Any requirement of the Specification for Goods is an estimate only and may be varied by agreement in writing.

(b) The Price includes all losses or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages);

(c) Any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill.

Seller shall in no way affect the validity or enforceability of the remaining provisions in a Contract. Any such provision shall be deemed to be modified to the minimum extent necessary to make it valid or enforceable. If such modification is not possible, the relevant provision shall be deemed modified subject to such consequential modification as may be necessary for the purpose of such severance.

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(d) Words in the singular include the plural and in the plural include the singular.

(e) Reference to a Condition is to a Condition of these Conditions unless the context requires otherwise.
ANY LIABILITY OF THE SELLER FOR NON-DELIVERY OF THE GOODS SHALL BE LIMITED TO EITHER DELIVERING THE GOODS WITHIN A REASONABLE TIME OR ISSUING A CREDIT NOTE AT THE PRO RATA CONTRACT RATE AGAINST ANY INVOICE RAISED FOR SUCH GOODS.

The Seller may deliver the Goods by stages, and where it is agreed in writing between the parties that delivery shall be deemed to be a separate Contract. Without limiting the other provisions herein, no failure or defect in delivery in respect of any Contract or instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

If for any reason the Buyer fails to accept delivery of any of the Goods within two (2) Business Days of the Seller giving notice to the Buyer that the Goods are ready, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorizations for the Goods when they are tendered by the Seller for delivery then, except where such failure is caused by a Force Majeure Event:

(i) delivery of the Goods shall be deemed to have been completed at 9:00 am on the second (2nd) Business Day after the day on which the Seller notified the Buyer that the Goods were ready; (ii) risk in the Goods shall pass to the Buyer on completion of delivery; and (iii) the Seller may store the Goods until delivery takes place, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance). The Buyer shall be responsible for all Losses incurred by the Seller where the Buyer fails to accept delivery of Goods.

If ten (10) Business Days after the Seller giving notice to the Buyer that the Goods were ready the Buyer has not accepted delivery of the Goods, the Seller may resell or otherwise dispose of part or all of the Goods.

7. Title

(a) The title in the Goods supplied shall not pass to the Buyer until receipt by the Buyer in cleared funds of payment in full (including payment of any default interest) for:

(i) the Goods; and (ii) any other goods or services that the Seller has supplied to the Buyer and in respect of which payment is due.

(b) Until the title in the Goods passes to the Buyer the Buyer shall:

(i) be a bailee of the Goods;

(ii) store the Goods separate from all other goods held by the Buyer so that the Goods remain readily identifiable as the Seller’s property;

(iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(iv) not fix or annex the Goods to or merge the Goods with any part of the Buyer’s premises, plant or equipment without the Seller’s prior consent in writing;

(v) maintain the Goods in satisfactory condition;

(vi) keep the Goods insured against all risks with a reputable insurer which has knowledge and confirmed by a RFI by the Buyer or the Buyer’s carrier, at its own expense (without limitation, storage and insurance). The Buyer shall be responsible for all Losses incurred by the Seller where the Buyer fails to accept delivery of Goods.

(c) If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in Conditions 21(a)(iv) to 21(a)(x); (viii) give the Seller such information relating to the Goods as the Seller may require from time to time; and (ix) not dispose of, charge or encumber the Goods or any interest in the Goods or purport to do so, but the Buyer may resell the Goods to an independent third party on the second (2nd) Business Day after the day on which the Buyer is notified that the Goods were ready; and (x) give the Seller notice to the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods, and if the Buyer fails to so promptly, the Seller may enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

8. Warranty for Goods

(a) Subject to Condition 8(b), the Seller warrants that on delivery, and for a period of thirty-six (36) months from the date of delivery the Goods shall:

(i) conform with the Specification for Goods; and (ii) be free from material defects or material workmanship.

(b) In respect of Goods which are packages or electrically or electronically controlled or actuated Goods, the Seller warrants that on delivery, and for a period of 12 months from the date of delivery such Goods shall:

(i) conform with the Specification for Goods; and (ii) be free from material defects in material or workmanship.

(c) Subject to the remainder of this Condition 8, the Seller warrants that if the Buyer returns the Goods within the relevant warranty period for such Goods (as set out in either Condition 8(a) or 8(b)) and on the Seller’s examination such Goods prove defective as to material or workmanship or as to compliance with the relevant Specification for Goods the Seller shall:

(i) give notice to the Buyer that such Goods prove defective as to material or workmanship or as to compliance with the relevant Specification for Goods; and (ii) following giving notice thereof to the Buyer; (aa) with respect to Goods which have been manufactured by the Seller, make good the defect without charge by (at the Seller’s option) repairing the defective components of the defective Goods, or replacing the defective Goods (in their entirety) as the Seller in its discretion considers appropriate; or

(bb) with respect to Goods which have been supplied by the Supplier, make good the defect without charge by (at the Seller’s option) repairing the defective components of the defective Goods, or replacing the defective Goods. (c) with respect to Goods which have been supplied by the Seller, make good the defect without charge by (at the Seller’s option) repairing the defective components of the defective Goods, or replacing the defective Goods. (d) The above warranties shall apply except where the defect in the Goods:

(i) has been caused wholly or partly by deterioration of the Goods which is necessarily and reasonably to be expected over the period of use which has elapsed since delivery; or (ii) has been caused while the Goods were at the Buyer’s risk by: (aa) wilful default or negligence by the Buyer or its employees, agents, contractors or bailees; (bb) the occurrence of an accident; (cc) failure by the Buyer to follow the Seller’s instructions in relation to the storage, use, installation, commissioning or maintenance of the Goods; (dd) failure by the Buyer to follow good trade practice; (ee) the Buyer altering or repairing such Goods without the consent in writing of the Seller; (ff) fair wear and tear, negligence or by any abnormal conditions such as (without limitation) waterhammer, corrosive attack or excessive dirt in the system, RFI or electrical supply failure.

9. Returns

(a) The Seller shall not refund the Buyer for any amounts paid by the Buyer in the event that the Buyer returns the Goods (or part thereof) except with the Seller’s prior consent in writing. Where such consent is given, the Buyer agrees to pay to the Seller a minimum handling charge of thirty per cent (30%) of the invoiced value. The Seller’s cost of returning any Goods shall be paid by the Buyer.

(b) To qualify for any refund, the Goods must be appropriately packed to protect them from being damaged in transit and be received by the Seller in a salable condition within two (22) Business Days of delivery to the Buyer. The term ‘Goods’ within this Condition 9(b) has the meaning set out within Condition 5(d).

10. Instructions and Health and Safety at Work

(a) The Buyer shall observe strictly the provisions of the Seller’s instructions in writing regarding the use and application of the Goods together with any revisions thereof and shall ensure that any other person other than the Buyer who observes or has access to the Goods is furnished with and observes such instructions.

(b) The Buyer shall be solely responsible for and shall keep the Seller indemnified against all Losses incurred by the Seller in relation to any use of the Goods other than in accordance with the Seller’s instructions, operating, and maintenance instructions.

11. Export Sales

(a) Where the Goods are supplied for export from the United Kingdom the following additional Conditions shall apply, and where there is any conflict between the provisions of this Condition 11 and any other Conditions, the provisions of this Condition 11 shall prevail.

(b) Charges for the cost of export deliveries and documentation shall be as stated in the Contract.

(c) Unless otherwise agreed between the Seller and the Buyer in writing, payment shall be in terms of the Buyer’s normal terms of trade, and in the event of any dispute arising, the甲方's reasonable belief that such event is a Force Majeure Event, the Seller shall give the Buyer notice to the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods, and if the Buyer fails to do so promptly, the Seller may enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
Goods is prohibited by the US Government, the UK Government, the UN, the EU or any other relevant organisation.

(h) The Buyer will indemnify the Seller for all liabilities, loss, damages, costs and expenses awarded against or incurred by the Seller arising out of in connection with any breach of the Buyer’s obligations contained in Condition 11(g).

(i) The Buyer agrees to provide the information with any information the Seller reasonably requires concerning the destination and use of the Goods, to allow the Seller to supply in full with any relevant export legislation.

SUPPLY OF SERVICES

12. Period of Supply

(a) Unless otherwise specified in the Order Acknowledgment, the agreement for the supply of the Services shall be for a period of one (1) year from the date the Seller issues an Order Acknowledgement to the Buyer in accordance with Condition 3(d) (the "Contract Term").

(b) The Seller reserves the right to increase its price for the Services at any time during the Term for Services. The Seller will give the Buyer notice in writing of any such increase not less than eight (8) weeks before the proposed date of such increase. If such notice is not accepted in full by the Buyer, it will notify the Seller in writing within two (2) weeks of the Seller’s notice and the Seller shall have the right, without limiting its other rights or remedies, to terminate the Contract by giving four (4) weeks’ notice in writing to the Buyer.

13. Performance of Services

(a) The Seller agrees to provide the Services in accordance with the Specification for Services in all material respects, and to supply as necessary spare or replacement parts and/or equipment at the site(s) specified in the Seller’s Order Acknowledgement.

(b) If the Seller agrees to supply spare or replacement parts and/or equipment, such supply will be strictly on the basis of these Conditions.

(c) Any stated performance date is an estimate only and time for performance of the Services shall not be of the essence. The Seller shall use reasonable endeavours to meet any stated performance date. If no date for performance is specified, the time for performance shall be at the Seller's discretion.

(d) The SELLER SHALL NOT BE LIABLE FOR ANY LOSSES (AS DEFINED), CAUSED DIRECTLY OR INDIRECTLY BY ANY DELAY IN THE PERFORMANCE OF THE SERVICES EVEN IF CAUSED BY THE SELLER’s NEGLIGENCE.

(e) SUBJECT TO CONDITION 13(g), ANY DELAY IN THE PERFORMANCE OF THE SERVICES SHALL NOT ENTITLE THE BUYER TO TERMINATE OR RESCIND THE CONTRACT UNLESS SUCH DELAY EXCEEDS ONE HUNDRED AND EIGHTY (180) DAYS.

(f) SUBJECT TO CONDITION 13(g), THE SELLER'S LIABILITY FOR NON-PERFORMANCE OF THE SERVICES SHALL BE LIMITED TO EITHER THE ESTIMATE OF THE REASONABLE TIME OR THE ISSUE OF A CREDIT NOTE AT THE PRO RATA CONTRACT RATE AGAINST ANY INVOICE SUBMITTED TO THE SELLER FOR THE SERVICES.

(g) If the Seller’s performance of the Services is prevented or delayed by the Buyer or by the failure of the Buyer to perform any of its obligations under the Contract ("Buyer Default") then upon the Seller giving the Buyer notice in writing that there has been a Buyer Default:

(i) the Seller shall without limiting its other rights or remedies have the right to suspend the performance of the Services provided by it, the Buyer and the Buyer shall inform the Buyer of such suspension and shall allow the Buyer to inspect and test the Goods or any part thereof at the Buyer’s site(s) for storage of the Goods; and

(ii) the Buyer shall not be liable for any Losses incurred by the Buyer arising directly or indirectly from the Seller’s failure or delay in performing the Services; and

(iii) the Buyer shall be entitled to ask the Seller on demand for all Losses incurred by the Buyer arising directly or indirectly from the Buyer Default.

(h) The Seller reserves the right, at the Seller’s discretion, to employ subcontractors to perform any or any part of the Seller’s obligations (including, without limitation, to commission, install, maintain or repair any parts or equipment) on behalf of the Seller.

(i) The Seller warrants that in providing the Services it will exercise reasonable care and attention and that it will comply with all applicable laws and regulations. However the Seller excludes liability for all Losses arising directly or indirectly out of any failure or diminution in performance of the Buyer’s plant or equipment caused by the plant or equipment, or any part thereof:

(i) being used or operated otherwise than in accordance with any applicable installation, maintenance or operational instructions; or

(ii) being used or operated otherwise than in accordance with the Seller’s instructions or in breach of the Conditions; or

(iii) having been adjusted, changed or altered in any way by the Buyer or any third party since the date of installation or commissioning of the plant or equipment or any part thereof or the date of the immediately preceding visit by the Seller’s employee or sub-contractor.

(j) The Buyer warrants to the Seller that the Buyer’s plant and equipment is supplied with water, steam, gas, power, or any other material in accordance with any additional requirements in writing notified by the Seller to the Buyer in respect of the Buyer’s plant and equipment. The Seller excludes all liability for Losses arising directly or indirectly out of any failure or diminution in performance of the Buyer’s plant or equipment or any part thereof which is caused directly or indirectly by a breach by the Buyer of this warranty.

(k) With regard to the testing of safety and relief valves as part of the Services, the effective seat area must be determined to carry out the test. The Buyer will inform the Seller of the effective seat area or the Seller shall calculate the effective seat area based on data obtained from engineering drawings supplied by the valve manufacturer or the Buyer. The Buyer shall use its best endeavours to ensure the accuracy of the effective seat area provided to the Seller as such information is critical to test accuracy. The Seller shall accept no liability for Losses arising directly or indirectly from erroneous test results caused directly or indirectly by incorrect information regarding the effective seat area being provided.

(l) The Seller reserves the right to replace at the Buyer’s cost the Buyer’s plant or equipment or any part thereof which is unserviceable or inefficient as the Seller considers reasonably necessary to ensure full utilisation of the Services to provide the Services in accordance with the specification set out in the Order Acknowledgment.

(m) Alternatively, the Seller may charge the Buyer for the reconditioning of any part of the Buyer’s plant or equipment that, in the reasonable opinion of the Seller, cannot be suitably or economically repaired on site. The Seller will provide the Buyer with an estimate of reconditioning charges for each item and the Buyer considers that the Seller has reconditioned the item(s) reconditioned, the Seller reserves the right to amend the scope of the Services as its absolute discretion it considers necessary.

14. Access to Buyer’s Site

(a) The Buyer shall co-operate with the Seller in all matters relating to the Services, and shall provide the Seller with such information as the Seller may reasonably require in order to perform the Services. The Buyer shall ensure that all information given by or on behalf of the Seller is kept in strict confidence.

(b) The Buyer shall obtain and maintain any necessary licences, permissions, and consents which may be required before the date upon which the Services are due to start.

(c) The Buyer shall permit the Seller, its employees, agents, consultants and subcontractors full and free access to the Buyer’s site(s) and to the Buyer’s plant and equipment which is the subject of the Contract, subject to the Seller and its employees, agents, consultants and subcontractors complying with the Buyer’s reasonable requirements as to site safety and security. However, at the time of any pre-arranged visit the Seller’s employees, agents, consultants and subcontractors will be responsible for the reinstatement of any pipe lagging and the dismantling of any scaffolding erected.

The Buyer will provide the Seller’s employees, agents, consultants and subcontractors with all specialist safety clothing or equipment as may be necessary to meet the Buyer’s health and safety and environmental rules (excluding hard hat, safety glasses, overalls and protective shoes which will be at the Seller’s cost).

(h) The Buyer will procure that the Seller’s employees, agents, consultants and subcontractors are covered by the Buyer’s third party liability insurance policy of an amount of not less than three million pounds (£3,000,000) in respect of each occurrence whilst such employees or subcontractors are on the Buyer’s site(s).

(i) Emergency Call-outs are intended for genuine emergency breakdown of the Buyer’s plant or equipment which is the subject of the Contract only and will be charged by the Seller to the Buyer at the appropriate daily rate specified in the Order Acknowledgment. Each Emergency Call-out will be charged as one (1) Additional day’s work and shall not include any additional days specified in the Order Acknowledgment for the supply of the Services.

(j) The Buyer acknowledges and agrees that the Seller shall be in no way, occupier or control (or be deemed to control) any part of the Buyer’s site(s) and/or hold or be fixed with any duties or liabilities under health and safety laws or regulations or common law in relation to any part of the Buyer’s site(s).

GENERAL

15. Payment and Other Buyer Obligations

(a) In respect of the Goods, subject to Condition 15(d) the Seller shall invoice the Buyer for the full purchase price of the Goods on or at any time after the date of delivery of the Goods.

(b) In respect of the Services, the Seller shall invoice the Buyer for the Services either monthly or quarterly as set out in the Contract.

(c)(i) In the event that the Buyer chooses to purchase additional Goods or Services from the Seller that are not set out in the Contract but which are related to the Contract, the terms of such Contract will be deemed to apply to such additional Goods or Services and the Buyer shall pay the Buyer for such Goods and Services pursuant to Condition 15(a) or 15(b), as appropriate, under the original Purchase Order number unless otherwise agreed between the parties.

(d) The Seller may in its absolute discretion agree in writing to the Buyer paying for the Goods in instalments, or may agree in writing to extend credit to the Buyer in respect of the payment for Goods. In the event that the Seller agrees to extend credit to the Buyer, any amount or any part thereof which is owed by the Buyer to the Seller is not paid in accordance with the invoice date or any due date, the Seller may charge the Buyer interest on the overdue amount at a rate equal to the Bank of England Base Rate plus 5% per annum and any sum the Buyer is required to pay in accordance with the invoice or any due date.

(e) The Buyer shall pay each invoice submitted by the Seller.
16. Cancellation

(a) No contract shall be cancelled by the Buyer except with the Seller’s prior consent in writing.

(b) In the event of the Seller agreeing to the Buyer cancelling all or any part of the Contract, the Seller may, without prejudice to any other rights against the Buyer which it may have, require the Buyer to pay a cancellation charge. Any cancellation charge will correspond to the type of contract being cancelled. Contracts for supply of Goods or Services may be subject to a cancellation charge of 100% of the price of the Contract after the Order Acknowledgement has been sent.

(c) In the event that the Buyer agrees to cancel all or any part of a Contract in respect of the supply of Goods or Services (or both) which have been ordered to comply with the Buyer’s special requirements, the Buyer shall be liable for all costs incurred by the Seller up to the time of cancellation of the Contract in addition to paying a cancellation charge pursuant to Condition 16(b).

17. Intellectual Property

(a) The Buyer acknowledges that:

(i) the Intellectual Property Rights in the Goods and any materials prepared by the Seller or on its behalf which relate to the Goods and their development (including, without limitation, drawings, designs, samples, models and similar items) (the “Goods Materials”) are the property of the Seller or the third party manufacturers of the Goods (as applicable);

(ii) nothing in these Conditions or in a Contract shall be construed as conferring on the Buyer, or granting any rights in favour of the Buyer in the Intellectual Property Rights in the Goods or the Goods Materials. The Buyer may not sell or otherwise supply the Goods to a Third Party which is the subject of any statutory trade prohibition of the United States of America or a member state of the European Union, or where the type or nature of the Goods makes sale to a Third Party the Seller may upon giving notice thereof to the Buyer refuse to deliver the Goods or any part of the Goods.

(b) Without any other terms of these Conditions the Seller does not limit its liability in respect of any direct or indirect losses sustained by any person, or statements made by any person, made, in connection with the Goods.

(c) SUBJECT TO AND WITHOUT LIMITING CONDITION 19(B) OR ANY OTHER CONDITION, THE BUYER SHALL NOT BE LIABLE TO THE SELLER IN RESPECT OF ANY OTHER LOSS ARISING OUT OF OR IN CONNECTION WITH ANY CONTRACT FOR THE SUPPLY OF GOODS AND/OR SERVICES (OR THAT PART OF A CONTRACT WHICH RELATES TO GOODS AND SERVICES), WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL IN NO CIRCUMSTANCES EXCEED THE VALUE OF THE GOODS OR SERVICES IN THE CONTRACT (OR ACQUIRED FROM THE SELLER IN ALL THE CONTRACTS BETWEEN THE SELLER AND THE BUYER OR INCORPORATE INTO OR ARE DIRECTLY OR INDIRECTLY INCREASED BY ANY LOSSES (AS DEFINED) ARISING DIRECTLY OR INDIRECTLY OUT OF OR IN CONNECTION WITH ANY CONTRACT FOR THE SUPPLY OF GOODS AND/OR SERVICES (OR THAT PART OF A CONTRACT WHICH RELATES TO GOODS AND SERVICES).

(d) The buyer acknowledges and agrees that the limited warranties and all limitations and exclusions of the Seller’s liability set out in these conditions are reasonable and all losses calculated in the price of the Goods or Services (or both) (as applicable) and the Buyer shall accept risk or insure accordingly (or both).

(e) The Seller shall have no liability or responsibility for any information in any quotation or Order Acknowledgement is applied in connection with products other than the Goods and Services.

(f) This Condition 19 shall survive the termination or cancellation of the Contract.

20. Force Majeure

(a) The Seller shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

(b) If the Force Majeure Event prevents the Seller from providing any of the Goods or Services (or both) for more than forty-four (44) Business Days, the Seller shall, without incurring any other rights or obligations, have the right to terminate the Contract with the Buyer immediately by giving notice in writing to the Buyer.

21. Events of Default, Termination, Repossession, Suspension; Dispute

(i) within the earlier of thirty (30) days of the date of the invoice or such other period of time after the date of the invoice as has been agreed in the Contract; and

(ii) in Pounds Sterling (or such other currency as the Seller may from time to time agree in writing) to a bank account nominated in writing by the Seller.

(f) Time is of the essence in relation to payment.

(g) All amounts payable by the Buyer under the Contract are exclusive of VAT chargeable from time to time. Wherever appropriate, supply for VAT purposes is made under the Contract by the Seller to the Buyer, the Seller shall, on receipt of a valid VAT invoice from the Buyer, pay to the Seller such additional amount of VAT as are payable by the Services or the Goods at the same time as payment is due for the supply of the Services or the Goods.

(h) The Buyer shall make payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless required by law.

(i) No payment shall be deemed to have been received until the Buyer has received cleared funds.

(j) All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.

(k) If the Buyer fails to pay the Seller any sum due pursuant to the Contract for the due date for payment:

(i) the Buyer shall be liable to pay to the Seller at the maximum rate allowed by applicable law; and

(ii) the Seller may terminate the contract and without liability to the Buyer, suspend performance of its obligations under the Contract and under any or all other Contracts between the Seller and the Buyer or terminate the Contract and any or all other Contracts between the Seller and the Buyer with immediate effect.

(l) If the Buyer pays any amount to the Seller without apportioning it between specific debts or liabilities, the amount paid shall be apportioned as the Seller thinks fit. The Seller may appropriate the entire amount paid to one or more specific items in respect of which payment is due, rather than to all the items in respect of which payment is due.

(m) Buyer shall comply with all applicable laws, statutes, regulations and codes from time to time in force, including those related to data protection and anti-bribery and corruption. Buyer must comply with the requirements of the United Kingdom Modern Slavery Act 2015 (the “Act”) and shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Act if such activity, practice or conduct had been carried out in the United Kingdom. Additionally, Buyer shall comply, and shall ensure compliance of any party by which it subcontractors complies, with the requirements of the United Kingdom Modern Slavery Act 2015, including ensuring that all forms of forced labour are eliminated from its business.

(n) In the event of any claim, proceeding or suit by a third party against the Buyer alleging an infringement of such party’s rights by any of the Intellectual Property Rights in the Goods or the Goods Materials (or both), the Seller shall defend the claim, proceeding or suit and shall, at the option of the Seller:

(i) the Buyer promptly notifying the Seller in writing of any such claim, proceeding or suit; and

(ii) the Seller being given sole control of the defence of the claim, proceeding or suit, and

and provided that the Seller shall not be liable and shall not defend the claim, proceeding or suit to the extent that such infringements arise out of or in connection with violations to the Goods or the Goods Materials (or both) made by anyone except the Seller or its authorised representative, or out of use or annexion of the Goods or the Goods Materials (or both) with or to products or third party materials not specified or expressly approved in advance in writing by the Seller, or where the claim, proceeding or suit arises from the Seller’s adherence to the Buyer’s requested changes to the Specification for Goods or from infringing items of the Buyer’s origin, design or implementation.
Resolution

(a) The Seller may terminate the Contract with immediate effect by giving notice in writing to the Buyer if:
   (i) the Buyer fails to pay any amounts due under the Contract on the due date for payment;
   (ii) the Buyer otherwise breaches the Contract with the Seller and the breach, if remediable and previously notified in writing to the Buyer, is not remedied within five (5) Business Days by the Buyer receiving such notice; or
   (iii) the Seller terminates any other Contract between the Seller and the Buyer;
   (iv) the Buyer is or otherwise becomes insolvent or unable to pay its debts or suspends payment of its debts or threatens to do so or is unable to pay its debts as they fall due or admits its inability to pay its debts; or
   (v) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation;
   (vi) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer other than for the sole purpose of a scheme for a solvent amalgamation;
   (vii) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
   (viii) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
   (ix) the holder of a charging charge over the Buyer has become entitled to appoint or has appointed an administrative receiver;
   (x) a person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over the assets of the Buyer;
   (xi) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Conditions 21(a)(iv) to Condition 21(a)(x) (inclusive);
   (xii) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
   (xiii) the Buyer’s financial position deteriorates to such an extent that in the Seller’s opinion the Buyer’s capability to adequately fulfill its obligations under the Contract has been placed in jeopardy.

(b) In the event that the Seller terminates the Contract pursuant to Condition 21(a) the Seller may (in its absolute discretion and without prejudice to its other rights under these Conditions or otherwise) by notice in writing to the Buyer do any one or (to the extent not inconsistent with one another) more of the following:
   (i) suspend any deliveries of Goods to be made under any contract with the Buyer;
   (ii) revoke any express or implied authority to sell or use any Goods the title in which has not passed to the Buyer (“Relevant Goods”);
   (iii) require the Buyer to deliver to the Seller any Relevant Goods; and the Buyer shall do so, failing which the Seller may enter the premises where the Relevant Goods are or are thought to be and repossess the Goods, without liability for any resulting damage to the Buyer’s premises, plant or equipment.

(c) All disputes arising out of or in connection with the Contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be London, with the laws of England governing the Contract. The language of the arbitration shall be English.

22. Confidentiality

Each of the Seller and the Buyer (the “Receiving Party”) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (“Disclosing Party”), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party’s business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party’s obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Condition 22 as though they were a party to the Contract. The Receiving Party may also disclose such of the Disclosing Party’s confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This Condition 22 shall survive termination or cancellation of the Contract.

23. Miscellaneous

(a) The Seller’s rights under these Conditions are in addition to any other rights which the Seller may have under the general law or otherwise.

(b) If the Buyer comprises two or more persons, their obligations are joint and several.

(c) The Buyer shall not assign, transfer, mortgage, charge, sub-contract, or otherwise dispose of or deal in any Contract or any rights or obligations (or both) (as applicable) thereunder in whole or in part without the Seller’s prior consent in writing. Any such action purported to be taken by the Buyer without the Seller’s prior consent in writing shall be void.

(d) The Seller may at any time assign, transfer, mortgage, charge, sub-contract or otherwise dispose of or deal in its rights or obligations (or both) (as applicable) under any Contract or any part of it to any person, firm or company.