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## 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

### 1.1 Definitions:

<b>Business Day:</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Conditions:</b>	these terms and conditions as amended from time to time in accordance with clause 16.8.
<b>Consumables:</b>	Packaging including but not limited to netting and plastic containers used in conjunction with the Supplier Hardware to package items of food ( <b>Packaging</b> ) and/or ink and/or labels and/or date stamps used to mark the Packaging.
<b>Consumables Specification:</b>	any specification for the Consumable including any relevant drawings that are agreed in writing between the Supplier and the Customer as set out in the Quote and confirmed by the Customer in the Order.
<b>Contract:</b>	the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
<b>Control:</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
<b>Customer:</b>	the person or firm who purchases the Goods and/or Services from the Supplier.
<b>Customer System:</b>	all equipment, software, hardware (excluding Supplier Hardware), IT systems, ERP systems databases, data storage facilities, networks, utilities, means of connectivity or communication, third party equipment or third party hardware owned or used by the Customer whether or not such system interacts with or is in communication with Xact Control Software or Xact Control Base System or any module or node including but not limited to specific items and details as set out in the Front Sheet.
<b>Deliverables:</b>	the deliverables set out in the Quote and confirmed by the Customer in the Order or as otherwise agreed in writing by the Supplier and the Customer.
<b>Delivery Location:</b>	has the meaning given in clause 4.2.
<b>Effective Date:</b>	as set out in the Front Sheet
<b>Force Majeure Event:</b>	has the meaning given to it in clause 15.
<b>Front Sheet:</b>	the front sheet to the Software Licence Terms and Conditions as defined in those Software Licence Terms and Conditions.
<b>Goods:</b>	the Supplier Hardware and/or Consumables (or any part of the Supplier Hardware and/or Consumables) which the Supplier is to supply as set out in the Order.

<b>Intellectual Property Rights:</b>	patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>Machine Sale:</b>	a sale for any Supplier Hardware.
<b>Maintenance Release:</b>	release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.
<b>Module:</b>	a computer programme created by the Supplier that provides additional functionality for use in combination with the Xact Control Base System. Each Module contains only 2 Nodes and details of the Modules which the Customer has purchased are as set out in the Front Sheet.
<b>New Version:</b>	any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.
<b>Nodes:</b>	the nodes or points of connection forming part of the Modules each node connecting one line on the equipment forming part of the Customer System details which are as set out in the Front Sheet.
<b>Non-machine Sale:</b>	a sale of any Consumable.
<b>Order:</b>	the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's Quote as the case may be.
<b>Quote:</b>	the Supplier's quote for the supply of Goods and/or Services requested by the Customer.
<b>Services:</b>	the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Quote and/or where appropriate the Service Specification.
<b>Service Specification:</b>	the description or specification for the Services provided in a service level agreement between the Supplier and the Customer or otherwise in writing by the Supplier to the Customer.
<b>Site:</b>	the premises from which the Customer carries out its business as stated in the Front Sheet.
<b>Software:</b>	the computer programs which make up the Xact Control Base System together with all Modules and Nodes as listed in the Front Sheet and any Maintenance Release or Module which is acquired

by the Customer during the subsistence of the Software Licence Terms and Conditions.

**Software Licence Terms and Conditions:** the terms and conditions applicable to the licence of Software by the Supplier to the Customer.

**Supplier:** "Xact" the trading name of Lawtons Limited, a company registered in England and Wales (company number 062802229) with its registered office at Unit 20-24 Gibraltar Row, King Edward Industrial Estate, Liverpool, L3 7HJ.

**Supplier Hardware:** the hardware or equipment supplied by the Supplier to the Customer under this Contract being any automated handling solution or any automated process packaging solution which includes but is not limited to a sale of any produce grading system, net packing, flow packing, punnet netting, case filling and palletising, robot palletising, checkweighers, inkjet coding and marking systems, labelling systems and metal detectors.

**Supplier Hardware Specification:** any specification for the Supplier Hardware, including any relevant plans or drawings, that are agreed in writing by the Supplier and the Customer as set out in the Quote and confirmed by the Customer in the Order.

**Supplier Materials:** has the meaning given in clause 8.1.7.

**Xact Control Base System:** the Software supplied by the Supplier under the Software Licence Terms and Conditions which is installed by the Supplier on the Supplier Hardware and includes the failover system, the electronic checklist, use traceability, reporting and performance information dashboard together with the two Modules and Nodes selected by the Customer and set out in the Front Sheet.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a party includes its successors and permitted assigns.
- 1.4 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.6 A reference to **writing** or **written** includes email.

## **2. Basis of Contract**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Customer shall be responsible for ensuring the information provided to the Supplier in relation to the Goods and/or Services as set out in the Order, which for the avoidance of doubt shall include the quantity, quality and description of the Goods and/or Services is accurate and in sufficient detail to enable the Supplier to perform the Contract within any stated timeframes.

- 2.3 Where the Order consists of a Machine Sale, the Order shall only be deemed to be accepted when the Supplier is in receipt of the Customer's deposit at which point and on which date the Contract shall come into existence.
- 2.4 Where the Order consists of a Non-Machine Sale, the Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.5 Where the Order consists of a Machine Sale and a Non-Machine Sale, the Order shall only be deemed to be accepted when the Customer receives their Order confirmation incorporating these terms along with a deposit invoice.
- 2.6 No Contract may be cancelled by the Customer without the written agreement of the Supplier and only on the terms that the Customer shall indemnify the Supplier in full against all losses, costs (including the cost of all labour and materials used regardless as to whether the costs of such labour and materials are incurred directly by the Supplier or a third party), damages, charges and expenses incurred by the Supplier as a result of the cancellation.
- 2.7 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any illustrations or descriptions of the Goods and/or Services contained in the Supplier's catalogues, brochures or on its website or other Supplier sales literature (**Marketing Materials**) are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them or on it as is appropriate. They shall not form part of the Contract nor have any contractual force.
- 2.8 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.9 Any Quote given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue (**Quote Period**) unless accepted earlier by the Customer.
- 2.10 Upon expiry of the Quote Period, the Supplier may alter the Quote without giving notice to the Customer.
- 2.11 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### **3. Goods**

- 3.1 The Goods are described in the Supplier's Marketing Materials subject to any modifications in the Quote and confirmed in the Order.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Supplier Hardware Specification and/or Consumables Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the specification of the Goods if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality or performance of the Goods.

- 3.4 The Customer shall:
- 3.4.1 ensure that, save for the work carried out by the Supplier, the Supplier Hardware is not tampered with or opened or damaged by the Customer, its employees or agents or any third party;
  - 3.4.2 not move the Site of the Supplier Hardware without the prior written permission of the Supplier; and
  - 3.4.3 immediately update the Supplier in relation to any modifications or updates to any software forming part of the Customer System with which the Supplier Hardware or any part thereof integrates.

#### 4. Delivery of Goods

- 4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which, where the Supplier deems it appropriate will include but is not limited to, the date of the Order, the account number, order date, customer reference, description of the Goods, despatch date, despatch note number, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and, if the Order is being delivered in instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Goods shall either be;
- 4.2.1 delivered by the Supplier to the delivery location set out in the Order, or such other delivery location as the parties may agree in writing (**Delivery Location**); or
  - 4.2.2 collected by the Customer from the Supplier's registered office address (**Registered Office Location**); or
  - 4.2.3 collected by the Customer from such other collection location as may be agreed by the Supplier in writing (**Collection Location**).
- 4.3 Delivery of the Goods shall be completed on;
- 4.3.1 the completion of unloading the Goods at the Delivery Location; or
  - 4.3.2 the Customer signing the delivery note for the Goods at the Registered Office Location or the Collection Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, the date of delivery can be varied if agreed in writing by the parties and the time of delivery of the Goods is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods howsoever caused, which for the avoidance of doubt shall include, any delay that is caused by a third party, a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the delivery or collection of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a third party, a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.6 If the Customer fails to take delivery of the Goods at the time stated for delivery or the Customer fails to give adequate delivery instructions to the Supplier at least five Business Days before the time stated for delivery, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods, and without limiting any other right or remedy available to the Supplier;
- 4.6.1 delivery of the Goods shall be deemed to have been completed at 5.00pm on the date stated for delivery or where that date had not been agreed three Business Days following the day on which the Supplier notified the Customer that the Goods were ready; and without limiting any other right or remedy available to the Supplier,
- 4.6.2 the Supplier may store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance); or
- 4.6.3 the Supplier may sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
- 4.7 Where the Goods are to be delivered in instalments;
- 4.7.1 each separate delivery and supply shall constitute a separate contract and shall be invoiced and paid for separately; and
- 4.7.2 any failure by the Supplier to deliver and supply any one or more of the instalments in accordance with the Contract or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to cancel any other instalment.

## 5. **Quality of Goods**

- 5.1 The Supplier warrants that on delivery, and for a period of 30 days from the date of delivery (**Warranty Period**), the Supplier Hardware shall:
- 5.1.1 conform in all material respects with their description and any applicable Supplier Hardware Specification;
- 5.1.2 be free from material defects in the design, quality and condition of materials and workmanship
- unless otherwise agreed between the Supplier and the Customer in writing.
- 5.2 The warranty set out in clause 5.1 does not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee given by the manufacturer to the Supplier, details of which the Supplier shall provide to the Customer on request.
- 5.3 Notwithstanding clauses 5.1 and 5.2 the Customer acknowledges and agrees there shall be no warranties in relation to any Consumables.
- 5.4 Subject to clause 5.5, if:
- 5.4.1 the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Supplier Hardware does not comply with the warranty set out in clause 5.1; and

5.4.2 the Supplier is given a reasonable opportunity of examining such Supplier Hardware provided; and

5.4.3 if the order made was for the provision of Supplier Hardware, the Customer (if asked to do so by the Supplier) returns such Supplier Hardware to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its sole discretion, repair or replace the defective Supplier Hardware (or the part in question) by such means and at a location determined by the Supplier, or refund the price of the defective Supplier Hardware in full (or a proportionate part of the price), in which case the Supplier shall have no further liability to the Customer provided that where, having been notified of the claim as set out in this clause 5.4, the Supplier reasonably determines that such claim is not valid, the Supplier may reject such claim and charge the Customer for any costs reasonably incurred by the Supplier in connection with the Customer's claim that some or all of the Supplier Hardware does not comply with the warranty in clause 5.1 including without limitation any wasted delivery charges and labour costs.

5.5 The Supplier shall not be liable for the Supplier Hardware's failure to comply with the warranty set out in clause 5.1 if:

5.5.1 the Customer makes any further use of such Supplier Hardware after giving a notice in accordance with clause 5.4;

5.5.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Supplier Hardware or (if there are none) good trade practice regarding the same;

5.5.3 the defect arises as a result of the Supplier following any drawing, design or Supplier Hardware Specification supplied by the Customer;

5.5.4 the Customer alters or repairs such Supplier Hardware without the written consent of the Supplier;

5.5.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

5.5.6 the Supplier Hardware differs from its description **OR** the Supplier Hardware Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or

5.5.7 the Customer breaches clause 3.4.

5.6 A claim by the Customer pursuant to clause 5.1 which is based on a defect in the quality or condition of the Supplier Hardware or their failure to correspond with the specification shall (whether or not delivery or collection is refused by the Customer) shall be notified to the Supplier within 7 days from the date of delivery or the date agreed for collection as is appropriate (where the defect or failure was not apparent on reasonable inspection) within seven days after discovery of the defect or failure. If delivery is not refused or collection is not attempted and the Customer does not notify the Supplier accordingly, the Customer shall not be entitled to reject the Supplier Hardware and the Supplier shall have no liability for such defect or failure and the Customer shall be bound to pay the price as if the Supplier Hardware had been delivered or collected in accordance with the Contract.

5.7 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Supplier Hardware's failure to comply with the warranty set out in clause 5.1.



- 5.8 These Conditions shall apply to any repaired or replacement Supplier Hardware supplied by the Supplier.

## **6. Title and Risk**

- 6.1 The risk in the Goods shall pass to the Customer;
- 6.1.1 at the time the Goods reach the Delivery Location or the Collection Location (as is appropriate in the circumstances), which for the avoidance of doubt shall be prior to offloading; or
- 6.1.2 at the time the Goods are made available for collection from the Registered Office Location by the Supplier to the Customer; and
- 6.1.3 if the Customer refuses, fails, or is unable to take delivery of the Goods, at the time when the Supplier has tendered delivery of the Goods.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 hold the Goods a fiduciary agent and bailee and store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.2.2 to clause 13.2.4; and
- 6.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to:
- 6.3.5.1 the Goods; and
- 6.3.5.2 the ongoing financial position of the Customer.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. Supply of Services**

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Order for Services shall only be deemed to be accepted when [the Supplier acknowledges receipt of the Order in writing to the Customer] at which point and on which date the Contract shall come into existence (**Services Commencement Date**).
- 7.3 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, the Service Specification or as otherwise advised in writing by the Supplier to the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.4 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services.
- 7.5 To the extent that the Services are to be supplied in accordance with a Service Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Service Specification. This clause 7.5 shall survive termination of the Contract.

## **8. Customer's Obligations**

- 8.1 The Customer shall:
  - 8.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and/or the Supplier Hardware Specification and/or Consumables Specification are complete and accurate;
  - 8.1.2 co-operate with the Supplier in all matters relating to the provision of Goods and/or supply of Services including complying with any additional obligations as set out by the Supplier in the Service Specification and/or Supplier Hardware Specification and/or Consumables Specification as is appropriate in the circumstances;
  - 8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Goods and/or supply the Services;
  - 8.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to provide the Goods and/or supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 8.1.5 prepare the Customer's premises for the provision of Goods and/or supply of the Services;
  - 8.1.6 at its own expense, obtain and maintain all necessary licences, permissions and consents which may be required for the purchase,

importation, use or resale of the Goods and/or Services by the Customer before the date of this Contract and if necessary, produce evidence of the same to the Supplier on demand; and

- 8.1.7 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
  - 8.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend delivery of the Goods and/or the supply of Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - 8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
  - 8.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 9. Charges and Payment

- 9.1 Subject to any special terms agreed between the Supplier and the Customer, the price for Goods and/or Services:
  - 9.1.1 shall be the Supplier's quoted price or, if no price is quoted or a quoted price is no longer valid, the price set out in the Supplier's written acceptance of the Order; and
  - 9.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goodswhich shall be invoiced to the Customer.
- 9.2 The charges for Services set out in the Order shall be calculated on a time and materials basis:
  - 9.2.1 the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00am to 5.00pm worked on Business Days;
  - 9.2.2 the Supplier shall be entitled to charge overtime based on the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2.1; and
  - 9.2.3 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services

provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

- 9.3 The Supplier reserves the right to increase the price of the Goods and/or Services, by giving written notice to the Customer at any time before delivery of the Goods or the supply of Services, to reflect any increase in the cost to the Supplier that is due to any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes, levies and duties, and increases in labour, materials and other manufacturing costs), any change in the delivery and/or supply date(s), quantities or types of Goods and/or Services ordered, any change to the Order, the Supplier Hardware Specification and/or Consumables Specification and/or Service Specification, or any delay caused by any instructions of the Customer in respect of the Goods and/or Services or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 9.4 In respect of Goods;
- 9.4.1 where the Goods are to be delivered, the Supplier may invoice the Customer on or at any time after despatch; or
- 9.4.2 where the Goods are to be collected, the Supplier may invoice the Customer on or at any time after the Goods are available for collection.
- 9.5 In respect of Services, the Supplier may invoice the Customer on completion of the Services.
- 9.6 The Customer shall pay each invoice submitted by the Supplier:
- 9.6.1 within 30 days of the date of the invoice; and
- 9.6.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the provision of Goods or supply of the Services at the same time as payment is due for the provision of Goods or supply of the Services.
- 9.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 13, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.8 will accrue each day at 4% a year above the Handelsbanken's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **10. Intellectual Property Rights**

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services (other than intellectual property rights in any materials provided by the Customer) shall be owned by the Supplier or third parties with whom the Supplier contracts in order to provide the Goods and/or Services.

- 10.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a licence during the term of the Contract to use the Intellectual Property Rights for the purpose of receiving and using the Goods and/or Services in its business.

## **11. Confidentiality**

- 11.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the Supplier's group of companies to which the other party belongs, except as permitted by clause 11.2.
- 11.2 Each party may disclose the other party's confidential information:
- 11.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
  - 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **12. Limitation of Liability:**

- 12.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £10,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 12.2 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 12.3.1 death or personal injury caused by negligence;
  - 12.3.2 fraud or fraudulent misrepresentation; and
  - 12.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.4 Subject to clause 12.3, the Supplier's total liability to the Customer shall not exceed:
- 12.4.1 in the case of the provision of Goods the price paid for the Goods; or
  - 12.4.2 in the case of the supply of Services the price paid for the Services.
- 12.5 This clause 12.5 sets out specific heads of excluded loss and exceptions from them:

12.5.1 Subject to clause 12.3, clause 12.5.2 excludes specified types of loss.

12.5.2 The following types of loss are wholly excluded:

- 12.5.2.1 loss of profits;
- 12.5.2.2 loss of sales or business;
- 12.5.2.3 loss of agreements or contracts;
- 12.5.2.4 loss of anticipated savings;
- 12.5.2.5 loss of use or corruption of software, data or information;
- 12.5.2.6 loss of or damage to goodwill;
- 12.5.2.7 indirect, special or consequential loss;
- 12.5.2.8 loss caused by any defect in the Goods and/or Services arising from any drawing, design or Goods Specification supplied by the Customer;
- 12.5.2.9 loss caused by any defect in the Goods and/or Services arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow any applicable instructions including those provided by the manufacturer or the Supplier (whether oral or in writing), misuse or any other items or materials which are used in conjunction with the Goods and any alteration or repair of the Goods and/or Services without the Supplier's prior written approval;
- 12.5.2.10 any loss in relation to the Consumables that occurs after the Packaging has been opened containing the Consumables has been opened;
- 12.5.2.11 any loss caused by a typographical, clerical or other error or omission in the Supplier's Marketing Materials, quotation, price list, invoice or other document issued by the Supplier;
- 12.5.2.12 any loss if the total price for the Goods and/or Services (as is appropriate in the circumstances) has not been paid by the due date for payment;
- 12.5.2.13 any loss caused as a result of data inputted by the Customer into the Supplier Hardware; and
- 12.5.2.14 any loss caused by any Customer breach of clause 3.4.

whether caused by the Supplier, its employees or otherwise which arise out of or in connection with the provision of Goods and/or supply of Services (including any delay in supplying or any failure to provide the Goods and/or supply the Services in accordance with the Contract or at all) or their use or resale by the Customer under or in connection with the Contract.

12.6 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections

3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.7 This clause 12 shall survive termination of the Contract.

### **13. Termination**

13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 30 days written notice.

13.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the other party if:

13.2.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;

13.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

13.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

13.2.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

13.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or

13.3.2 there is a change of Control of the Customer.

13.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.2.2 to clause 13.2.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

### **14. Consequences of Termination**

14.1 On termination of the Contract:

14.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

14.1.2 the Customer shall return to the Supplier all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's

premises and take possession of them. Until they have been returned to the Supplier, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

- 14.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## **15. Force Majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control, which for the avoidance of doubt includes but is not limited to any act of god, pandemic, industrial action, trade disputes, or difficulties in obtaining raw materials, labour, parts or machinery as a result of Brexit (a **Force Majeure Event**). If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

## **16. General**

### **16.1 Assignment and other dealings**

- 16.1.1 The Supplier may at any time assign, subcontract or otherwise delegate any or all of its rights and obligations under the Contract.
- 16.1.2 The Customer shall not assign, subcontract or otherwise delegate its rights and obligations under the Contract without the prior written consent of the Supplier.

### **16.2 Notices.**

- 16.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or pre-paid first-class post or next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 16.2.2 Any notice shall be deemed to have been received:
  - 16.2.2.1 if delivered by hand, at the time the notice is left at the proper address;
  - 16.2.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the Business Day after posting; or
  - 16.2.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 16.2.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 16.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.



- 16.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 16.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 16.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 16.6 **Entire agreement.**
- 16.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 16.7 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 16.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 16.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.