



---

Ripley Engineering Limited

Unit B The Faraday Centre, Daneshill West Ind Est  
Basingstoke, Hampshire, RG24 8PD

t +44 (0)1256 473 940

e [service@ripley-eng.co.uk](mailto:service@ripley-eng.co.uk)

[www.ripley-eng.co.uk](http://www.ripley-eng.co.uk)

---

## **Terms and Conditions of Sale**

### **Ripley Engineering Limited**

(19 pages)

**The customer's attention is drawn in particular to the provisions of clause 13.**

## **1. Interpretation**

### **1.1 Definitions:**

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 16.4.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Delivery:** has the meaning given in clause 4.3.

**Delivery Date:** the agreed or proposed date of Delivery of the Goods as expressed in the Order Acknowledgement.

**Delivery Location:** has the meaning given in clause 4.2.

**Drawing Approval:** means formal approval, sent by the Customer via email, of the provisional drawings provided by the Supplier.

**Force Majeure Event:** an event, circumstance or cause beyond a party's reasonable control.

**Goods:** the goods (or any part of them) set out in the Order.

**HMRC:** means HM Revenue and Customs.

**Order:** the Customer's order for the Goods, as confirmed by the Order Acknowledgement issued by the Supplier.

**Order Acknowledgement:** written confirmation of the Order placed by the Customer, issued by the Supplier which outlines the Price for the Goods.

**Price:** the agreed price for the Goods supplied by the Supplier to the Customer, as set out in the Order Acknowledgement.

**Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

**Supplier:** RIPLEY ENGINEERING LIMITED (registered in England and Wales with company number 08514678).

**Warranty Period:** has the meaning given in clause 5.1.

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) 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.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but not email.

## 2. Basis of contract

- 2.1 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.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order in the form of an Order Acknowledgement, at which point the Contract shall come into existence. Acceptance of the Order by the Supplier shall not assume that the Supplier agrees to the Customer's terms and conditions.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings (excluding those drawings that require Drawing Approval) descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 For the avoidance of doubt, drawings that require Drawing Approval shall form part of the Contract.
- 2.7 A quotation price for the Goods given by the Supplier shall not constitute an offer. A quotation price shall only be valid for a period of 20 Business Days from its date of issue.

- 2.8** The Customer may within five days of an Order being placed to the Supplier, cancel the Order. The Order shall only be cancelled when the Customer notifies the Customer by email and by telephone. Acknowledgement of the cancellation will be provided by the Supplier within three Business Days.
- 2.9** If the Order is cancelled within five days, as mentioned in clause 2.8, the Customer shall not incur any fee. If the Order is cancelled after five days, but before Drawing Approval, the Customer will incur a fee at Supplier's discretion based on any work already undertaken with such fee to be a minimum of £500 and a maximum of 10% of the Price. If the Order is cancelled after Drawing Approval but before the date that is 40 Business Days before the Delivery Date, the Customer will incur a fee at the rate of 50% of the Price. If the Order is cancelled within 40 Business Days before the Delivery Date, the full Price is due and will be payable to the Supplier by the Customer.
- 2.10** If a refund is due to the Customer, the Supplier will use their best endeavours to process the refund within seven Business Days of providing acknowledgement to the Customer as referred to in clause 2.8.

### **3. Goods**

- 3.1** The Goods are described in the Specification.
- 3.2** To the extent that the Goods are to be manufactured in accordance with a 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 and other professional costs and expenses) suffered or incurred by the Supplier 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 Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3** The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 3.4** Illustrations, photographs, descriptions (including descriptions relating to technical performance, capacity, output, consumption and dimensions) and general literature relating to the Goods are intended as a general guide only and such material shall not form part of the Contract. The Goods will not necessarily correspond in all respects with the goods shown in those illustrations and photographs or such descriptions or general literature. Without limitation the Supplier reserves the right to make without notice to the Customer any improvement or alteration in the material, specification, dimensions or design of the Goods which it thinks reasonable or desirable or which it is required to make by law and such improvement or alteration shall be deemed to have been accepted by the Customer and the Supplier as a variation to the Contract.
- 3.5** The Supplier can provide goods which are suitable to meet the Customer's purpose or which will meet specified technical performance provided that the Customer provides written details of its

requirements and obtains the Supplier's advice (as to which goods will be suitable) in Writing. Unless the Supplier has agreed in writing to provide equipment for a specified purpose or of a specified technical performance the Customer shall be deemed to have selected the Goods without having made its purpose or requirements known to the Supplier.

#### **4. Delivery**

- 4.1** The Supplier shall ensure that all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments the outstanding balance of Goods remaining to be delivered are communicated to the Customer on the Order Acknowledgement or otherwise.
- 4.2** The Supplier shall deliver the Goods to the location as agreed with the Customer (**Delivery Location**) at any time as agreed between the Supplier and the Customer.
- 4.3** Delivery is completed on the completion of unloading of the Goods at the Delivery Location (**Delivery**) or on the completion of loading of the Goods if the Goods are collected by the Customer or their agent from the Supplier's premises.
- 4.4** The Supplier reserves the right to deliver the Goods by instalments and to render a separate invoice in respect of each instalment.
- 4.5** If the Supplier exercises its right to deliver the Goods in instalments in accordance with clause 4.4, then any delay in the provision of such deliveries or failure to deliver any further instalment(s) shall not entitle the Customer to reject the Contract or the delivery of any other instalment or to withhold payment in respect of any instalment previously delivered.
- 4.6** The Supplier may deliver the Goods with missing parts, where these parts are not available. The Supplier will deliver the missing parts to the Customer as soon as they are able at the Supplier's own cost. Any delay in the provision of such deliveries or failure to deliver any further parts shall not entitle the Customer to reject the Delivery of any other part or without payment in respect of any part previously delivered.
- 4.7** Any dates quoted for Delivery are approximate only.
- 4.8** Delays in Delivery of all or part of the Goods shall not constitute a reason for the Customer to cancel the Order or reject any future Delivery or part Delivery.
- 4.9** The Supplier shall at all times between Order and Delivery of the goods in accordance with clause 4.3, use all reasonable endeavours to meet requested or agreed Delivery dates. The Supplier shall notify the Customer of any delays that will impact Delivery of the Goods. Delays in Delivery of the Goods (in whole or part) shall not constitute a reason for the Customer to cancel the Order or reject Delivery of the Goods.

- 4.10** 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 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.
- 4.11** If the Customer fails to accept Delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) Delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until actual Delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.12** If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for Delivery the Customer has not accepted actual Delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.13** The Customer is deemed to have accepted Delivery of the Goods and the Customer accepts that the Goods are in good condition and are in accordance with the Contract, unless the Customer provides a notice to the Supplier in writing within 10 days of the date of Delivery of the Goods.

## **5. Quality**

- 5.1** The Supplier warrants that on shipment or invoicing of the Goods, whichever is earlier, and for a period of 12 months after (**Warranty Period**), the Goods shall:
- (a) conform with their description; and
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - (d) be fit for any purpose held out by the Supplier.
- 5.2** Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within five Business Days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods or any part of the Goods if the defect is caused by faults in the workmanship of the Supplier or the materials used by the Supplier.

**5.3** The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- (f) any defect which in the opinion of the Supplier arises by reason of misuse, misapplication, neglect or accident occurring after risk has passed to the Buyer;
- (g) the Customer fails to notify the Supplier of the defect in accordance with clause 5.2;
- (h) any part of the Goods has not been manufactured or sold by the Supplier in which case the Customer is entitled only to such benefit as the Supplier may receive under any warranty given in respect thereof;
- (i) any equipment on which service or attempt to remedy a defect has been carried out by anyone other than the Supplier or any approved service agent without the Customer first having notified the Supplier in accordance with clause 5.2 and having obtained the Supplier's written agreement as to how the defect shall be addressed;
- (j) Any equipment is installed or situated outside Great Britain, Isle of Man, Northern Ireland, Eire and the Channel Islands without the Supplier's consent in writing; or
- (k) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

**5.4** Where the Supplier supplies replacement part or parts under a warranty claim made by the Customer, the Customer shall, within 21 days of issuing the written notice set out in clause 5.2(a), return, at its cost, the defective part to the Supplier. Should the Customer fail to return the defective part within this period or should the part, when returned within this period, prove on inspection by the

Supplier or by the original manufacturer not to meet the criteria for replacement under warranty, the Supplier shall be entitled to invoice the Customer for the spare part(s) supplied.

- 5.5 If the Customer requires a warranty greater than that set out in clause 5.1 any such warranty must be in writing and signed by either the Secretary or a Director of the Supplier and shall in any event be limited to the amount that the Supplier can recover under the product liability insurance policies held by the Supplier at the date of the Contract.
- 5.6 Should the Supplier decide to visit site to examine, test, effect a repair or replace a part or component the Customer shall be responsible to provide any equipment or facility that may be required with respect to Health and Safety. The suitability of any equipment provided shall be the sole discretion of the Supplier.
- 5.7 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.8 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **6. Title and risk**

- 6.1 The risk in the Goods shall pass to the Customer on completion of Delivery or upon the Customer paying the Price in full or the Customer having failed to take Delivery of the Goods within 7 days from the Supplier's notification that the Goods are ready for Delivery for whatever reason, whichever is sooner.
- 6.2 Without limitation after risk has passed to the Customer if the Goods or any item thereof are lost, damaged or destroyed from any cause whatsoever (including the negligence of the Supplier, its servants or agents) whether or not the Goods are still in the possession of the Supplier then the Customer shall remain liable to pay the price of the Goods in full and if the Supplier repairs the Goods the Customer shall pay the reasonable cost of repairing the Goods.
- 6.3 Until the payments to the Supplier have been made in full the Customer shall hold the Goods as fiduciary agent for the Supplier and shall mark the Goods with an indication that they remain the Supplier's property, and they shall be kept separate and identifiable from any other products in the Customer's possession and shall be returned to the Supplier upon request and all the incidence associated with a fiduciary relationship shall apply.
- 6.4 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cleared funds) for the Goods.
- 6.5 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d); and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
  - (i) the Goods; and
  - (ii) the ongoing financial position of the Customer.

**6.6** Before title to the Goods has passed to the Customer, the Supplier shall have the right, if they so choose, to at any time without prior notice retake possession of the whole or any part of the Goods (and for that purpose shall be granted an irrevocable licence to go upon any premises occupied by the Customer or which the Customer has access to) and to dismantle the Goods or detach the Goods from any items in which they have been incorporated.

**6.7** The Customer shall indemnify the Supplier against all costs and liabilities which the Supplier incurs in retaking possession of the goods (or any part thereof) or in exercising any of its rights under this Clause without limiting any liability in respect of any damage (including damage caused to such premises in such retaking of possession and removal of the Goods) which it was not reasonably practicable to avoid.

## **7. Price and payment**

**7.1** The price of the Goods shall be the price set out in the Order Acknowledgement.

**7.2** The Supplier may, by giving notice to the Customer at any time up to 10 Business Days before Delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the Delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

- 7.3** The price of the Goods excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 7.4** If the Supplier deems that the VAT rate is zero percent within the Order Acknowledgement, the Customer undertakes that in the event that the proof of export provided to the Supplier does not satisfy a HMRC inspection, and VAT becomes payable, the Customer agrees to pay such VAT and will do so within seven days of a valid tax invoice being presented to the Customer by the Supplier.
- 7.5** The Customer shall make full payment of the Price prior to Delivery of the Goods unless specified otherwise by the Supplier. If payment is not made in full prior to the due date or if before the due date the Supplier believes that the Customer is unable or unwilling to make payment in full, the Supplier shall have the right to suspend Delivery of the Goods pending payment of the Price in full or shall terminate the Contract.
- 7.6** The Customer shall pay each invoice submitted by the Supplier:
- (a) On receipt of the invoice, unless the Supplier has agreed alternative terms with the Customer in writing; and
  - (b) 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.
- 7.7** The Supplier is unable to accept payment of an invoice via cash, cheque or credit card.
- 7.8** 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 14, 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 7.8 will accrue each day at 8% a year above the Bank of England's base rate.
- 7.9** 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).
- 7.10** The Supplier is not a member of the Construction Industry Scheme and so all invoices and payments should be made in full in accordance with this clause 7 with no deductions.
- 8. Packaging**
- 8.1** The cost of the Goods will not include the cost of packaging, unless specified in the Order Acknowledgement. If there is a conflict between the Order Acknowledgement and the sales literature, the Order Acknowledgement takes precedent. Such packaging shall be non-returnable and suitable for the protection of the Goods under normal transport conditions and for dry indoor storage in

temperate climate for up to three months from the date of Delivery provided that the packaging is not damaged or disturbed.

- 8.2** All other goods will (unless otherwise agreed in writing) be delivered by the Supplier without packaging. The Supplier shall be entitled to make an additional charge as agreed with the Customer or (if no charge has been agreed) a reasonable charge for packaging. The additional charge will be payable by the Customer at the same time and on the same terms as the price of the Goods.

## **9. Remedies**

- 9.1** Should the Customer deem that any supplies are not made in accordance with the Order and, where applicable, the Approved Drawings, the Customer shall be entitled to avail itself of remedies given under clause 16.9 but shall not automatically be entitled to reject the Goods (in whole or in part) or to reject further delivery of Goods or to cancel the Order in whole or in part without first affording the Supplier the opportunity to remedy the non-conformity in accordance with clause 16.9.

## **10. Data protection**

- 10.1** The following definitions apply in this clause 10:

- (a) Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.
- (b) Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- (c) Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

- 10.2** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

- 10.3** The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.

- 10.4** Without prejudice to the generality of clause 10.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of the Contract.

**10.5** Without prejudice to the generality of clause 10.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

- (a) process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;

- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

**10.6** The Customer consents to the Supplier appointing a third-party processor of Personal Data under the Contract. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 10 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 10.6.

**10.7** The Supplier may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

## **11. Technical Data**

**11.1** Any technical drawings, prints and specifications supplied by the Supplier under or in connection with a quotation or the Contract shall remain the property of the Supplier who shall reserve the copyright, design right and any registered design right therein. The Customer shall not copy them or communicate their contents to any third party without the Supplier's consent (which consent shall not be unreasonably withheld) and shall comply with the Supplier's reasonable requirements as to their use, return and otherwise. Any tools, moulds or dies bought or fabricated by the Supplier for the purpose of providing the Product shall be and shall remain the property of the Supplier.

**11.2** The property in the design of the Goods shall (subject to any existing rights of any third party or the Customer in any design or invention incorporated or used in the design of Goods) remain the exclusive property of the Supplier and neither the Customer nor any agent contractor or other person authorised by the Customer nor any other person, firm or company shall at any time make use of the design or any part thereof.

**11.3** The Supplier gives no warranty or indemnity in respect of any actual or alleged infringement of any patents, registered designs, design copyright, or any other industrial property right relating to the Goods.

## **12. Trade Name and Trade Terms**

- 12.1** The Customer undertakes not to hold himself out in any circumstances or in any manner whatsoever as having authority to sell, service, maintain or deal with the Goods as agent or dealer or other authorised representative of the Supplier.
- 12.2** The Customer undertakes not to use or reproduce any trade name or registered trade mark of the Supplier on goods, premises, vehicles, letter headings and other stationery, sales literature or in any way whatsoever and not to do or authorise to be done any infringing act to which the Trade Marks Act 1994 applies.
- 12.3** The Customer's undertakings under this clause 12 are conditions of the Contract so that any breach thereof shall entitle the Supplier to terminate the Contract and to recover damages in respect of all loss, damage and expense occasioned thereby. The Supplier at its option shall be entitled to recover the profit made by the Customer during the period of the breach from sales, servicing, maintenance and other dealings with goods manufactured by the Supplier.
- 12.4** Notwithstanding the terms of the Conditions no document purporting to authorise the Customer to do any act which would otherwise be a breach of the Customer's undertakings under this clause or purporting to consent thereto on behalf of the Supplier shall be binding on the Supplier unless it is a formal licence agreement bearing the Supplier's corporate seal.

## **13. Limitation of liability**

- 13.1** The Supplier has obtained insurance cover in respect of certain aspect of its own legal liability for individual claims not exceeding £10,000,000 for any one occurrence unlimited in all but in the annual aggregate. 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 liability.
- 13.2** References to liability in this clause 13 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.3** Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (d) defective products under the Consumer Protection Act 1987.
- 13.4** Subject to clause 13.3, the Supplier's total liability to the Customer shall not exceed the Price paid by the Customer.

**13.5** Subject to clause 13.3, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

**13.6** The Supplier shall be under no liability for indirect damages or consequential losses such as but not limited to loss of profit, lost savings, revenue, goodwill or customers, or for other loss or damage of whatsoever kind or howsoever caused as a result of any goods supplied or work done being defective or not in accordance with any order or as a result of anything done or omitted in connection with any work done or omitted to be done by the Supplier including any breach by the Supplier of any fundamental term of any order.

**13.7** The Customer recognises that the limitations of liability contained in this clause 13 are reasonable in that the prices quoted by the Supplier are dependent upon such limitations being incorporated in the Contract.

**13.8** This clause 13 shall survive termination of the Contract.

## **14. Termination**

**14.1** Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
- (b) the Customer 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

- (d) the Customer'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.

**14.2** Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

**14.3** Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

**14.4** On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of 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.

**14.5** Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

**14.6** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **15. Force majeure**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for three months after the proposed Delivery Date, either party may terminate the Contract by giving 10 Business Days written notice to the other.

## **16. General**

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

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

## 16.2 Confidentiality

- (a) Each party undertakes that it shall not at any time during the Contract disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.2(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) 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 the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16.2; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the 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.

## 16.3 Entire agreement

- (a) The Conditions and the Contract and any related documents entered into by the parties constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on 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.

**16.4 Variation** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 16.5 Waiver

- (a) Except as set out in clause 2.4, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**16.6 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 of the Contract is deemed deleted under this clause 16.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **16.7 Notices**

- (a) Any notice given to a party under or in connection with the Contract, these Conditions or any other related document shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day Delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day Delivery service, at 9.00 am on the second Business Day after posting.
- (c) 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.

## **16.8 Third party rights**

- (a) 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

## **16.9 Dispute resolution**

- (a) Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 16.9.
- (b) The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- (c) The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedure:
  - (i) Within five Business Days of service of the notice, the contract managers of each of the parties shall meet to discuss the dispute and attempt to resolve it.
  - (ii) If the dispute has not been resolved within ten Business Days of the first meeting of the contract managers, then the matter shall be referred to the directors (or persons of equivalent seniority) of each of the parties. The directors (or equivalent) shall meet within 14 Business Days to discuss the dispute and attempt to resolve it.
- (d) Until the parties have completed the steps referred to in clause 16.9 (c), and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief from the courts.

- 16.10 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.
- 16.11 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.