

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this Clause apply in this Agreement:

Commencement Date means the date of acceptance by the Supplier of the Customer's Purchase Order;

Credit has the meaning given in Clause 5.9;

Delivery Note means a document, produced by the Supplier or the appointed carrier of the relevant Products to the Customer at the Delivery Point;

Delivery Point means the location for delivery agreed between the Customer and the Supplier in writing;

Expenses means any out-of-pocket costs incurred by the Supplier in fulfilling an Order, including:

- a) postage, packaging, carriage, freight, and handling charges;
- b) insurance;
- c) currency conversion and banking charges applicable to the payment method used;
- d) value added tax or any other applicable sales tax in the country in which the Supplier is resident; and
- e) any customs, import or other duties charged in respect of the sale and importation of Products into the country in which the Customer is resident or the Delivery Point is located.

Intellectual Property Rights means all copyright, database rights, topography rights, design rights, trade marks, trade names, utility models, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world in or associated with the Products;

Incoterms® 2010 means the Incoterms® 2010 rules for the use of domestic and international trade terms issued by the International Chamber of Commerce;

Invoice means an invoice raised by the Supplier in accordance with Clause 7.2;

List Prices means the prices for the Products as agreed between the Customer and the Supplier from time to time;

Net Selling Price means the List Prices of Products ordered by the Customer less any discounts granted to the Customer by the Supplier in writing from time to time;

Order Confirmation means an order confirmation, sent by the Supplier to the Customer, agreeing to fulfil the Order;

Products means the products to be supplied by the Supplier as agreed in the Order Confirmation;

Purchase Order means an order for Products submitted by the Customer to the Supplier and accepted by the Supplier in accordance with Clause 3;

Specification means the specification of the Products agreed between the parties from time to time;

Term means the period during which this Agreement is effective;

Working Day is as defined in Clause 27.2.1; and

Warranty is as defined in Clause 4.1.

1.2 Reference to a Clause, is to a Clause of this Agreement, unless the context requires otherwise.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Words in the singular include the plural and in the plural include the singular.

1.5 A reference to a **person** includes an incorporated or unincorporated body.

1.6 A reference to a statute or statutory provision, rule, regulation or Incoterms® is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under a statute.

1.7 Unless the context otherwise requires, the words **including and include** and words of similar effect

shall not be deemed to limit the general effect of the words which precede them.

1.8 The headings in this Agreement are for ease of reference only and shall not affect its construction or interpretation.

2. SALE OF THE PRODUCTS

2.1 Subject to Clause 3.5, during the Term and subject to the provisions of this Agreement, the Supplier shall sell and the Customer shall buy such quantities of the Products as may be ordered by the Customer from time to time.

2.2 This Agreement shall apply to all future arrangements between the parties for the Supplier to supply and the Customer to buy goods unless the parties agree otherwise in writing.

3. ORDER PROCESS

3.1 The Customer shall notify the Supplier in writing of its forecast orders for each 90 day period, the first of which notification will be made no later than the Commencement Date and thereafter, at least 10 days before the start of the relevant 90 day period.

3.2 The Customer warrants that all such forecast orders are complete and accurate and acknowledges that the Supplier places orders on the basis of the volumes specified in such forecast orders and agrees that such forecast orders are binding on the Customer as soon as they are notified to the Supplier, unless otherwise agreed in writing with the Supplier. The Customer acknowledges and agrees that it shall be liable for any and all losses sustained by the Supplier due to the failure, in whole or in part, of any inaccurate forecasts, including the value of the finished and semi-finished Products as well as the cost of labour and raw materials used or prepared for the Products manufactured or to be manufactured by the Supplier and not purchased by the Customer.

3.3 The Customer shall place Purchase Orders (based on the relevant forecast order) by sending a Purchase Order to the Supplier. Any terms and conditions contained on or provided with the Customer's Purchase Order or any other documentation provided by the Customer are hereby expressly excluded and shall not form part of the contract between the parties.

3.4 A Purchase Order shall be treated as an offer by the Customer to contract with the Supplier, but shall not be binding on the Customer until accepted by the Supplier in accordance with Clause 3.5. The Supplier may, at its sole discretion, accept amendments to a Purchase Order after acceptance.

3.5 The Supplier shall, at its discretion, accept the Purchase Order and such Order Confirmation shall be treated as acceptance of the Customer's Purchase Order.

3.6 The Supplier shall arrange delivery of the Products in accordance with the Customer's instructions on the Purchase Order and the provisions of this Agreement, provided that, unless otherwise agreed between the parties, the Customer shall be liable to pay for all Expenses incurred by the Supplier in complying with such instructions.

4. SPECIFICATION OF THE PRODUCTS

4.1 The Supplier warrants that all Products sold by the Supplier to the Customer pursuant to this Agreement will conform in all material respects to the Specification at the date of delivery and will, subject to Clauses 4.2 and 4.3, continue to do so for a period of 12 months (unless otherwise notified by the Supplier) from that date (**Warranty**). All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in this Agreement are excluded from this Agreement to the fullest extent permitted by law.

- 4.2 During the period of the Warranty, if any non-conformance of any Products with the Specification is caused wholly or partly by any action or inaction of the Customer, including any of the Customer's manufacturing processes, the Supplier shall have no liability whatsoever, and the Customer shall be responsible for replacing or repairing such Products at its own expense.
- 4.3 Notwithstanding the provisions of Clause 4.1, if the Customer (a) combines the Products (or any part of them) with its own or any third party product; or (b) processes, reforms or reconstitutes the Products, the Warranty period will immediately terminate on the date of such action and the Supplier will have no liability under the Warranty from that date.
- 5. DELIVERY OF THE PRODUCTS**
- 5.1 The Supplier will have fulfilled its contractual obligations in respect of each delivery provided that the quantity actually delivered is no greater than 10% more or less than the quantity specified on the Purchase Order. The Customer shall pay for the actual quantity delivered.
- 5.2 Delivery of the Products shall take place at the Delivery Point in accordance with Incoterms® 2010, as the same may be updated, amended or substituted from time to time. Acceptance of any change to the Delivery Point requested by the Customer shall be at the Supplier's sole discretion and the Customer shall be liable for any additional Expenses incurred by the Supplier as a result of such change. The Supplier shall arrange for suitable transport to the Delivery Point.
- 5.3 Delivery or performance dates in relation to the supply by the Supplier of Products are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery of the Products.
- 5.4 If there is any delay on delivery of the Products which is outside the control of the Supplier, the Customer shall indemnify the Supplier on demand for all costs incurred in connection with such delay, including any additional transit, shipping or storage costs.
- 5.5 The Supplier may effect delivery in one or more instalments.
- 5.6 The Customer shall, within two Working Days of the arrival of each delivery of the Products at the Delivery Point:
- 5.6.1 conduct a thorough inspection of the appearance, quantity, materials, workmanship as well as performance of the Products in order to verify and confirm the conformity of the delivered Products with the Warranty; and
- 5.6.2 give written notice of rejection to the Supplier on account of any defect by reason of which the Customer alleges that the Products delivered do not comply with the Warranty and which was apparent on reasonable inspection.
- 5.7 If the Customer fails to give notice as specified in Clause 5.6.2 then, the Products shall conclusively be presumed to comply with the Warranty and this Agreement and, accordingly, the Customer shall be deemed to have accepted the delivery of the Products in question and the Supplier shall have no liability to the Customer with respect to that delivery (except in relation to liability for any latent defects).
- 5.8 If the Customer alleges that any Products are defective, it shall, if so requested by the Supplier, store the defective Products separately and safely or return the relevant Products (unaltered and unrepaired) to the Supplier for inspection as soon as possible and at its own risk and expense.
- 5.9 If the Supplier agrees that the Products which have been rejected by the Customer in accordance with Clause 5.8, do not comply with the Warranty, the Supplier shall:
- 5.9.1 supply replacement or repaired Products which comply with the Warranty, in which event the Supplier shall be deemed not to be in breach of this Agreement or have any liability to the Customer for the rejected Products; or
- 5.9.2 notify the Customer that it is unable to supply replacement Products, in which case the Supplier shall grant to the Customer a credit equal to the value of the Products which the Supplier agrees do not comply with the Warranty (**Credit**).
- 5.10 The Supplier's decision as to whether the Products comply with the Specification shall be final.
- 6. IMPORT LICENCES**
- The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Products as are required from time to time and, if required by the Supplier, the Customer shall make those licences and consents available to the Supplier prior to the relevant shipment.
- 7. PRICES AND PAYMENT**
- 7.1 The Customer shall pay the Supplier for the Products in accordance with the provisions of this Clause 7.
- 7.2 The Supplier shall invoice the Customer for the Net Selling Price following delivery of one or more Orders and all related Expenses (but less any Credits due to the Customer).
- 7.3 Unless otherwise agreed in writing between the parties, the Customer shall pay to the Supplier the total amount of each Invoice in GBP Sterling (£) by electronic transfer to the Supplier's nominated bank account within 30 days after the date of the relevant Invoice, notwithstanding that delivery may not have taken place and that property in the Products has not passed to the Customer. The time for payment shall be of the essence and no payment shall be deemed to have been made until the Supplier has received payment in cleared funds.
- 7.4 All amounts of money referred to in this Agreement shall be interpreted as being amounts exclusive of value added tax, any similar sales tax or any tax that replaces such sales taxes. Any such tax payable in relation to any such amounts shall be paid in addition to those amounts. If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to the Supplier, the Customer shall increase the sum it pays to the Supplier by the amount necessary to leave the Supplier with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
- 7.5 If the Customer does not make payment on or before the date on which it is due, interest shall be payable on the overdue amount at the rate which is 4% above the Bank of England base rate from time to time. Interest shall be payable at this rate both before and after any judgment is made against the Customer until the date on which payment in cleared funds is received in full, including all accrued interest.
- 7.6 The Customer shall make all payments due under this Agreement without any deduction by way of set-off, counterclaim, discount or otherwise unless the Customer has a valid court order from a court in England and Wales requiring an amount equal to or more than such deduction to be paid to the Supplier by the Customer, or unless such rights relied on cannot be excluded by the law of England and Wales or the insolvency laws of the jurisdiction in which the Customer is resident. All amounts due to the Supplier under this Agreement shall become due immediately if

this Agreement is terminated or novated despite any other provision.

8. TITLE AND RISK

- 8.1 Unless otherwise agreed between the parties, risk in and responsibility for the Products shall pass to the Customer once they have been delivered to the carrier appointed to deliver the Products to the Delivery Point.
- 8.2 Ownership of the Products shall not pass to the Customer until the Supplier has received payment in full of all monies owed by the Customer to the Supplier.
- 8.3 Until ownership of the Products passes to the Customer, the Customer shall hold the Products on the following terms:
 - 8.3.1 the Products shall be stored separately from other goods held by the Customer and shall be clearly identifiable as the property of the Supplier;
 - 8.3.2 the Products shall not be mixed with other goods or altered in any way;
 - 8.3.3 the Products shall be adequately stored and maintained in a satisfactory condition; and
 - 8.3.4 each Product shall be insured for an amount at least equal to its List Price and any proceeds of the insurance policy shall be held on trust for the Supplier in a separate account in the joint names of the Supplier and the Customer. The Customer shall not mix the insurance proceeds with any other money or pay the proceeds into an overdrawn bank account. The Customer shall account to the Supplier for the proceeds accordingly and make good any shortfall in the amount due to the Supplier.
- 8.4 The Customer shall lose its rights to possession of the Products if:
 - 8.4.1 the Customer becomes subject to any of the events in Clause 13.3.2 to Clause 13.3.8; or
 - 8.4.2 this Agreement terminates and the Customer does not pay all outstanding amounts under this Agreement within 30 days; or
 - 8.4.3 the Customer suffers any legal or equitable execution to be levied on its property.
- 8.5 The Customer grants to the Supplier an irrevocable licence for the Supplier, its agents and employees to enter any premises where the goods of the Customer are stored to ascertain whether any Products are stored there and to inspect, count and recover them.
- 8.6 The Customer shall register any necessary charge over money or goods and take such other steps as are necessary to give effect to this Clause 8 at the request of the Supplier.

9. CHANGES

- 9.1 The Supplier may, on giving written notice to the Customer, elect to alter the Specification of any of the Products. Where the Customer has placed an Order and the Supplier has accepted that Order, and the Specification of any of the Products contained in that Order are varied in accordance with this Clause 9.1, the Customer may cancel the part of the Order that relates to the varied Products only.
- 9.2 The Supplier may, on giving written notice to the Customer, exclude from this Agreement one or more of the Products as it thinks fit. Where the Customer has placed an Order and the Supplier has accepted that Order, and any of the Products contained in that Order are excluded from this Agreement, the Order shall automatically be varied to exclude such excluded Products.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Customer acknowledges that:
 - 10.1.1 the Intellectual Property Rights are the Supplier's (or its licensor's) property;
 - 10.1.2 nothing in this Agreement shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights. The Supplier asserts its full rights to control the use of its trade marks within the EEA and the Customer shall assist the Supplier as required in preventing parallel importers from diluting the Supplier's rights; and
 - 10.1.3 any reputation in any trade marks affixed or applied to the Products shall accrue to the sole benefit of the Supplier or any other owner of the trade marks from time to time.
- 10.2 The Customer shall not repackage the Products and/or remove any copyright notices, confidential or proprietary legends or identification from the Products save for any removal which is a necessary result of a manufacturing process of which the Supplier has been previously notified in writing by the Customer.
- 10.3 The Customer shall not use (other than pursuant to this Agreement) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which the Supplier or any associated company of Supplier owns or claims rights in anywhere in the world.
- 10.4 If at any time it is alleged that the Products infringe the rights of any third party or if, in the Supplier's reasonable opinion, such an allegation is likely to be made, the Supplier may at its sole option and its own cost:
 - 10.4.1 modify or replace the Products in order to avoid the infringement; or
 - 10.4.2 procure for the Customer the right to continue using the Products; or
 - 10.4.3 repurchase the Products at the price paid by the Customer, less depreciation at the rate the Supplier applies to its own equipment.
- 10.5 The Customer shall promptly and fully notify the Supplier of:
 - 10.5.1 any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Customer's notice; and
 - 10.5.2 any claim by any third party that comes to the Customer's notice that the sale or advertisement of the Products infringes the rights of any person.
- 10.6 The Customer agrees (at the Supplier's request and expense) to do all such things as may be reasonably required to assist the Supplier in taking or resisting any proceedings in relation to any infringement or claim referred to in Clause 10.5.
- 10.7 In the event of any claim, proceeding or suit by a third party against the Customer alleging an infringement of any Intellectual Property Right connected with the Products, the Supplier shall defend the Customer at the Supplier's expense, subject to:
 - 10.7.1 the Customer promptly notifying the Supplier in writing of any such claim, proceeding or suit; and
 - 10.7.2 the Supplier being given sole control of the defence of the claim, proceeding or suit, and provided that the Supplier shall not be liable for infringements to the extent that they arise out of or in connection with modifications to the Products made by anyone except the Supplier or its authorised representative, or out of use or combination of the

- Products with products or third party materials not specified or expressly approved in advance in writing by the Supplier, or where the claim, proceeding or suit arises from the Supplier's adherence to the Customer's requested changes to the Specification or from infringing items of the Customer's origin, design or selection.
- 10.8 The Supplier shall reimburse the Customer with an amount equal to any cost, expense or legal fees incurred at the Supplier's written request or authorisation and shall indemnify the Customer against any liability assessed against the Customer by final judgement on account of an infringement.
- 11. CONFIDENTIALITY**
- 11.1 Each party undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other which it has obtained or received as a result of discussions leading up to entry into this Agreement, or which it has obtained during the course of this Agreement, including all technical data, designs and drawings, except any information that is:
- 11.1.1 subject to an obligation to disclose under law, or that is required to be disclosed by any competent regulatory authority, by notice or otherwise;
- 11.1.2 already in its possession other than as a result of a breach of this Clause 11; or
- 11.1.3 in the public domain other than as a result of a breach of this Clause 11.
- 11.2 Each party undertakes to the other to take all steps that are necessary from time to time to ensure compliance with the provisions of this Clause 11 by its employees, agents and subcontractors.
- 12. ANTI-BRIBERY COMPLIANCE**
- Each party shall comply with all applicable laws, statutes, regulations, relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.
- 13. DURATION AND TERMINATION**
- 13.1 This Agreement shall commence on the Commencement Date and, subject to the provisions of this Clause 13, shall continue until termination or expiry in accordance with its terms.
- 13.2 This Agreement will continue until terminated in accordance with its terms or by either party giving to the other party not less than 3 months' written notice to terminate.
- 13.3 Either party may terminate this Agreement by giving written notice to the other party if any of the following events occurs:
- 13.3.1 the other party commits a breach of this Agreement which (in the case of a breach capable of remedy) has not been remedied within 30 days of the receipt by the other of a notice specifying the breach and requiring its remedy;
- 13.3.2 a winding-up order or bankruptcy order is made against the other party;
- 13.3.3 the other party passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party);
- 13.3.4 the other party has appointed to it an administrator or an administrative receiver;
- 13.3.5 being a partnership in addition to the above, suffers bankruptcy orders being made against all of its partners;
- 13.3.6 an incumbent takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the other party's assets;
- 13.3.7 the other party ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 13.3.8 any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into;
- 13.3.9 the other party ceases, or threatens to cease, to carry on business; or
- 13.3.10 any event analogous to those described in Clause 13.3.2 to Clause 13.3.8 occurs in relation to the other party in any jurisdiction in which that other party is incorporated, resident or carries on business.
- 13.4 Following the expiry of the Term or the earlier termination of this Agreement for any reason whatsoever, the Supplier shall be entitled (at its option) to cancel any Orders which have not yet been delivered.
- 13.5 On termination or novation of this Agreement for any reason and subject as otherwise provided in this Agreement to any rights or obligations that have accrued before termination, neither party shall have any further obligation to the other under this Agreement.
- 14. FORCE MAJEURE**
- 14.1 Neither party shall be liable to the other, or be deemed to be in breach of this Agreement, by reason of any delay in performing, or failure to perform, any of its obligations under this Agreement if the delay or failure was beyond that party's reasonable control (including fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war, warlike hostilities or threat of war, terrorist activities, accidental or malicious damage and any prohibition or restriction by any government or other legal authority which affects this Agreement and which is not in force on the date of this Agreement).
- 14.2 A party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out in Clause 14.1 shall notify the other party of the nature and extent of the circumstances in question as soon as practicable.
- 14.3 This Clause 14 shall cease to apply when such circumstances have ceased to have effect on the performance of this Agreement and the party affected shall give notice to the other party that the circumstances have ceased.
- 14.4 If any circumstance relied on by either party for the purposes of this Clause 14 continues for more than two months, the other party shall be entitled to terminate this Agreement by giving one month's written notice to the other party.
- 15. ENTIRE AGREEMENT**
- 15.1 This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes any previous agreement, warranty, statement, representation, understanding or undertaking (in each case whether written or oral) given or made before the date of this Agreement by or on behalf of the parties and relating to its subject matter.
- 15.2 Neither party has relied on any statement, representation, agreement, understanding or promise made by the other except as expressly set out in this Agreement.
- 16. WAIVER OF RIGHTS BASED ON MISREPRESENTATION**
- 16.1 Each party unconditionally waives any rights it may have to claim damages against the other on the basis of any oral or written statement made by the other or by its legal advisers (whether made carelessly or not) that is not set out or referred to in this Agreement (or for breach of any warranty given by the other not so

set out or referred to), unless such statement or warranty was made or given fraudulently.

16.2 Each party unconditionally waives any rights it may have to seek to rescind this Agreement on the basis of any statement made by the other (whether made carelessly or not), unless such statement was made fraudulently.

17. LIMITATION OF LIABILITY

17.1 The Supplier's total liability in contract, tort (including negligence), misrepresentation or otherwise in relation to this Agreement shall be limited to the price paid by the Customer to the Supplier for the Products affected

17.2 The Supplier shall not be liable to the Customer for:

17.2.1 any indirect, special or consequential loss or damage;

17.2.2 loss of data or other equipment or property;

17.2.3 economic loss or damage;

17.2.4 incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or

17.2.5 any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill,

even if the Supplier is advised in advance of the possibility of any such losses or damages.

17.3 The Supplier shall not be liable for any losses arising from the Customer's subsequent use or misuse of the Products including:

17.3.1 fair wear and tear;

17.3.2 willful damage;

17.3.3 the Customer's negligence, or that of its agents or employees, or any failure to follow the Supplier's instructions as to use of the Products;

17.3.4 abnormal working conditions beyond those referred to in the Specification; and

17.3.5 any alteration or repair of the Products by any manufacturing process or otherwise, save for any latent defect which means that the Product did not comply with the Specification.

17.4 The Supplier is not liable for a defect in the Products unless it is notified to the Supplier within two Working Days of the date of delivery.

17.5 The Supplier is not liable for:

17.5.1 non-delivery, unless the Customer notifies the Supplier of the claim within 2 Working Days of the agreed delivery date ;

17.5.2 shortages in the quantity of Products delivered in excess of those permitted by Clause 5.1, unless the Customer notifies the Supplier of a claim within 2 Working Days of receipt of the Products; or

17.5.3 damage to or loss of all or part of the Products in transit (where the Products are carried by the Supplier's own transport or by a carrier on behalf of the Supplier), unless the Customer notifies the Supplier within 2 Working Days of receipt of the Products or the scheduled date of delivery, whichever is the earlier.

17.6 The Customer acknowledges and agrees that the List Prices reflect the limitations of liability contained in this Agreement.

18. ASSIGNMENT

The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge or deal in any other similar manner with this Agreement or its rights or any part of them under this Agreement, subcontract any or all of its obligations under this Agreement, or purport to do any of the same.

19. DISPUTES

19.1 Subject as may be provided elsewhere in this Agreement, all disputes, differences or questions arising in relation to this Agreement shall be referred in the first instance to the Site General Manager (or equivalent role) of each the Supplier and the Customer, who shall meet together and attempt to settle the dispute between themselves (acting in good faith) within one calendar month.

19.2 If the people referred to in Clause 19.1 fail to resolve the dispute, it shall be referred to the Managing Director (or equivalent role) of each of the Supplier and the Customer, who shall meet together and attempt to settle the dispute between themselves (acting in good faith) within one calendar month.

19.3 If the Managing Directors fail to resolve the matter within one calendar month, then either party may refer the dispute to an appropriate court or tribunal, or may (at its discretion) opt for arbitration in accordance with the UNCITRAL Arbitration Rules 2010 (in which case such an election shall bind the other party until a conclusion is made or the arbitrator rejects the case).

19.4 The parties hereby agreed that in any reference to arbitration pursuant to Clause 19.3:

19.4.1 the appointing authority shall be the President of the Law Society;

19.4.2 the number of arbitrators shall be one;

19.4.3 the place of arbitration shall be London, UK; and

19.4.4 the language to be used in the arbitral proceedings shall be English.

19.5 Arbitration is without prejudice to the rights of the parties to the injunctive relief or to the rights of the parties in any future proceedings.

20. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or legal relationship of any kind between the parties that would impose liability upon one party for the acts or failure to act of the other party, or authorise either party to act as agent for the other. Save where expressly stated in this Agreement, neither party shall have the authority to make representations, act in the name or on behalf of or otherwise bind the other.

21. COSTS

Except as otherwise provided in this Agreement, each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and implementation of this Agreement.

22. SEVERANCE

The invalidity, illegality or unenforceability of any provision of this Agreement, or a provision in any other Agreement which is identical to one in this Agreement, shall not affect the other provisions and the Agreement shall be given effect as if the invalid, illegal or unenforceable provision had been deleted, unless the provision so affected is so fundamental to the Agreement that one or more of the essential elements of the contract is removed, and replaced with a provision with a similar economic effect to that intended by the parties if this can be achieved by another Clause.

23. COUNTERPARTS

23.1 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

23.2 Each counterpart, when executed, shall be an original, but all counterparts shall together constitute one and the same instrument.

24. FURTHER ASSURANCE

Either party shall, at the request and cost of the other, use all reasonable endeavours to do or procure the doing of all such further acts, and execute or procure the execution (as a deed or otherwise) of all such

- documents, as may from time to time be necessary to give full effect to this Agreement and to vest in the requesting party the full benefit of the assets, rights and benefits to be transferred to the requesting party under this Agreement.
- 25. AMENDMENT AND WAIVER**
- 25.1 No variation of this Agreement shall be effective unless it is made in writing, refers specifically to this Agreement and is signed by both of the parties.
- 25.2 No waiver of any term, provision or condition of this Agreement shall be effective, except where it is clearly made in writing and signed by the waiving party. No waiver of any particular breach of this Agreement shall be held to be a waiver of any other or subsequent breach.
- 25.3 No omission or delay on the part of any party in exercising any right, power or privilege under this Agreement shall operate as a waiver by it or of any right to exercise it in future or of any other of its rights under this Agreement.
- 25.4 The rights and remedies arising under, or in connection with, this Agreement are cumulative and, except where otherwise expressly provided in this Agreement, do not exclude rights and remedies provided by law or otherwise.
- 26. THIRD PARTY RIGHTS**
- No person who is not party to this Agreement shall have any right to enforce any term of this Agreement.
- 27. NOTICES**
- 27.1 Any notice or other communication to be given under this Agreement shall be in writing and in the English language and may be delivered by hand or sent by pre-paid post (by airmail post if to an address outside the country of posting) or fax to the relevant party at that party's registered office or last-known trading address and marked for the attention of the Global Commercial Director of the Supplier and the Managing Director of the Customer.
- 27.2 Any notice or document shall be deemed served:
- 27.2.1 if delivered by hand, at the time of delivery unless delivered after 5.00pm in which case they shall be given on the next day (other than Saturday or Sunday) on which the banks are ordinarily open for business in the City of London (**Working Day**);
- 27.2.2 if posted, two Working Days after posting (five Working Days if sent by airmail post); and
- 27.2.3 if sent by fax, at the time of transmission printed on the transmission confirmation sheet provided that an error free transmission report has been received by the sender and if the time of transmission is after 5.00pm on a Working Day or at any time on a day that is not a Working Day the notice shall be deemed to have been received at 9.00am on the next Working Day.
- 27.3 Notices under this Agreement shall not be validly served by e-mail.
- 28. SURVIVAL OF OBLIGATIONS**
- Any of the provisions of this Agreement that are expressed to take effect in whole or in part on or after termination, or are capable of having effect after termination, shall remain in full force and effect despite termination.
- 29. GOVERNING LAW AND JURISDICTION**
- 29.1 This Agreement shall be governed by and construed in all respects in accordance with English law. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this Agreement. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply but where they conflict with this Agreement, this Agreement shall prevail.
- 29.2 Subject to Clause 19 and Clause 29.3, the parties submit to the exclusive jurisdiction of the courts of England and Wales and agree that (subject to Clause 29.5), in respect of proceedings in England and Wales and in any other jurisdiction, process may be served on either of them in the manner specified for notices in Clause 27.
- 29.3 Nothing in this Clause 29 shall limit the right of the Supplier to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the Supplier from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- 29.4 It is the Customer's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Products. It is the Customer's obligation to ensure that no Products are exported or imported in violation of the laws of any jurisdiction into or through which the Products are transported during the course of reaching the Delivery Point. Where necessary, the Customer shall inform the Supplier at a reasonable time before delivery of any documents which it is necessary for the Supplier to provide in order to allow export of the Products in compliance with the laws of any relevant jurisdiction.
- 29.5 If requested by the Supplier, the Customer will appoint and authorise nominated agents resident in England to accept service on behalf of the Customer of all legal process, and service on such nominated agents shall be deemed to be service on the Customer.
- 29.6 The rights set out in this Clause 29 are in addition to any other manner of service permitted by law at the time when service is made.

