

## TERMS AND CONDITIONS OF SUPPLY

### March 2025 Version

#### 1. INTERPRETATION

##### 1.1. Definitions. In these Conditions, the following definitions apply:

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

**Buyer:** the person or firm who purchases the Goods and/or Services from the Seller.

**Buyer IPR:** means all Intellectual Property Rights in the Buyer Materials and any other Intellectual Property Rights of which the Buyer is the owner or licensee and which are disclosed, licensed or provided to the Seller pursuant to the Contract.

**Buyer Materials:** means any documents, instructions or other materials provided by the Buyer to the Seller in connection with the Contract.

**Charges:** means the Charges for the Services as determined in accordance with clause 10.2.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 19.9.

**Contract:** the contract between the Seller and the Buyer for the supply of Goods and/or Services comprising the Order Confirmation and these Conditions.

**Delivery Location:** means the UK Delivery Location or the International Delivery Location (as applicable) and as further defined in clause 5.1.

**Design Costs:** all costs, charges and expenses reasonably incurred by the Seller in the preparation of the Technical Drawing in accordance with clause 3, as set out in the Order Confirmation or if not set out in the Order Confirmation, as calculated in accordance with the Seller's standard rates in force from time to time.

**Force Majeure Event:** means an event beyond the reasonable control of the Seller including but not limited to (a) acts of God, flood, storm, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, malicious damage, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination, or sonic boom; (e) compliance with any law, order, rule, regulation, direction or action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; (g) breakdown of plant or machinery; (h) any labour or trade dispute, strikes, industrial action or lockouts; (i) non-performance by suppliers or subcontractors; and / or (j) interruption or failure of utility service or transport network.

**Group:** in relation to a company, that company, each and any subsidiary or holding company of that company and each and any subsidiary of a holding company of that company and "subsidiary" and "holding company" shall have the meaning given to them in section 1159 of the Companies Act 2006.

**Goods:** the products (or any part of them) to be supplied to the Buyer by the Seller as set out in the Order Confirmation.

**Incoterms:** means the Incoterms® 2020 and any amendments, re-enactments or updates to such terms in place from time to time, or any similar standardised international trade terms;

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order Confirmation:** the Seller's written confirmation outlining the Goods and/or Services to be provided which is appended to these Conditions.

**Prices:** the prices of the Goods as determined in accordance with clause 10.1.

**Purchase Order:** the Buyer's purchase order for the supply of Goods and/or Services by the Seller.

**Sanctions:** any laws or regulations relating to economic or financial, trade, immigration, aircraft, shipping or other sanctions, export controls, trade embargoes or restrictive measures from time to time imposed, administered or enforced by a Sanctions authority.

**Sanctions List:** any of the lists issued or maintained by a Sanctions authority designating or identifying persons that are subject to Sanctions, in each case as amended, supplemented or substituted from time to time, including (without limitation) the UK Sanctions List, Consolidated List of Financial Sanctions Targets in the UK and the Consolidated United Nations Security Council Sanctions List.

**Sanctions Target:** a person that is: (a) listed on a Sanctions List; (b) owned or controlled by a person listed on a Sanctions List; or (c) resident, domiciled or located in, or incorporated or organised under the laws of, a country or territory that is subject to any Sanctions; or otherwise identified by a Sanctions authority as being subject to Sanctions.

**Seller:** Colson X-Cel Limited registered in England and Wales with company number 02666765.

**Services:** the product design and/or product testing services (if any) supplied by the Seller to the Buyer as set out in the Order Confirmation.

**Technical Drawing** the cross-sectional drawing or general arrangement and/or specification detailing the goods, prepared by the Seller in accordance with clause 3.

- 1.2. In these Conditions a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted from time to time.
- 1.3. A reference to writing or written excludes fax but includes email.
- 1.4. 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.
- 1.5. Clause, Schedule and paragraph headings shall not affect the interpretation of the Contract.

2. **BASIS OF CONTRACT**

- 2.1. The Purchase Order constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2. The Purchase Order shall only be deemed to be accepted when the Seller issues its Order Confirmation at which point and on which date the Contract shall come into existence (the "**Commencement Date**").
- 2.3. The Contract, consisting of the Order Confirmation, these Conditions and (once issued and agreed in accordance with clause 3) the Technical Drawing, constitutes the entire agreement between the parties to the exclusion of all other documents previously exchanged between the parties (including the Purchase Order and any quotation issued by the Seller). The Buyer acknowledges that in entering into the Contract it has not relied on any statement, assurance, warranty, promise or representation (whether made innocently or negligently) which is not set out in the Contract. The Buyer agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 2.4. Apart from the Technical Drawing, any samples, drawings, descriptive matter or advertising issued by the Seller and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Seller's catalogues or brochures or on the Seller's website are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5. These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6. If there is any conflict or inconsistency between these Conditions, the Order Confirmation, and any Incoterms which are incorporated into the Contract by reference in the Order Confirmation, the order of precedence shall be: (i) the Order Confirmation; (ii) the Incoterms; (iii) these Conditions.
- 2.7. Any quotation given by the Seller shall not constitute an offer, and is only valid for a period of thirty (30) days from its date of issue.
- 2.8. 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. **DESIGN AND APPROVAL PROCESS**

- 3.1. Each of the Seller and the Buyer shall nominate one or more senior managers who shall be responsible for liaising in connection with the design, manufacture and supply of the Goods and / or Services under the Contract.
- 3.2. The Buyer shall in a timely manner provide all such information and other co-operation and assistance as the Seller may reasonably request in order to comply with its obligations under the Contract.
- 3.3. The Seller will either:
  - 3.3.1. issue the Technical Drawing (which it has prepared based on the requirements embodied in the Order Confirmation) at the same time as it issues the Order Confirmation to the Buyer as outlined in clause 2.2 above; or

- 3.3.2. following issue of the Order Confirmation as outlined in clause 2.2 above, prepare the Technical Drawing based on the requirements embodied in the Order Confirmation and issue the Technical Drawing to the Buyer.
- 3.4. Within ten (10) Business Days of receiving the Technical Drawing, the Buyer will notify the Seller in writing of whether or not the Technical Drawing is approved, such approval not to be unreasonably withheld or delayed.
- 3.5. If the Technical Drawing is approved by the Buyer, the Seller will proceed to manufacture the Goods in accordance with clause 4.1.
- 3.6. If the Technical Drawing is not approved by the Buyer:
  - 3.6.1. the Buyer will notify the Seller within ten (10) Business Days of receiving the Technical Drawing, providing as much detail as the Seller reasonably requires, of the reasons for the Buyer's approval being withheld and the respects in which the Buyer considers that the Technical Drawing does not align with the agreed requirements (the "**Requested Changes**"); and
  - 3.6.2. the Seller will use reasonable endeavours to amend the Technical Drawing in accordance with the Requested Changes and will issue the revised Technical Drawing to the Buyer in writing; and
  - 3.6.3. within ten (10) Business Days after receiving the revised Technical Drawing, the Buyer will notify the Seller whether the revised Technical Drawing is now approved.
- 3.7. The Seller reserves the right to increase the Charges and / or Prices due to (i) any Requested Changes (provided that the Seller will act reasonably in increasing the Charges and / or Prices due to such Requested Changes); (ii) any factor beyond the reasonable control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs; (iii) any delay caused by any instructions of the Buyer in respect of the Goods; (iv) any failure or delay by the Buyer in providing its approval of the Technical Drawing in accordance with clause 3.4 or in following the process outlined at clause 3.6 (as applicable) and / or (v) failure of the Buyer to give the Seller adequate or accurate information or instructions in respect of the Goods and / or the Services.
- 3.8. The parties will repeat the process set out in clause 3.6 and 3.7 until either:
  - 3.8.1. the Technical Drawing is approved by the Buyer, in which case the Seller will proceed to manufacture the Goods in accordance with clause 4.1; or
  - 3.8.2. the Seller in its reasonable opinion determines that it is unable to manufacture the Goods in accordance with the Requested Changes, in which case the Contract will be terminated with immediate effect; or
  - 3.8.3. the Buyer fails to provide the information required pursuant to clause 3.6.1 above within ten (10) Business Days of the most recent Technical Drawing being issued by the Seller, in which case the Seller may terminate the Contract with immediate effect.
- 3.9. In the event that the Contract is terminated in accordance with clause 3.8.2 or 3.8.3 above, the Seller shall have no liability to the Buyer and the Buyer will be liable to the Seller for the Design Costs.
- 3.10. In the event of any conflict or inconsistency between the Technical Drawing (once agreed pursuant to this clause 3) and any other part of the Contract, the Technical Drawing shall take precedence.

4. **GOODS**

- 4.1. The Seller shall manufacture, pack and supply the Goods in accordance with the Technical Drawing and, to the extent applicable, the other terms of the Contract.
- 4.2. The Seller reserves the right to amend the Technical Drawing if required by any applicable statutory or regulatory requirements.

5. **DELIVERY OF GOODS**

- 5.1. Delivery of the Goods will take place as follows:
  - 5.1.1. Where Goods are to be delivered to a location in the UK the Seller shall deliver the Goods to the location set out in the Order Confirmation (or such other location as the parties may agree) at any time after the Seller notifies the Buyer that the Goods are ready (the "**UK Delivery Location**").
  - 5.1.2. Where the Goods are required to be delivered to a location outside of the UK the Seller shall notify the Buyer when the Goods are ready for collection and the Buyer shall make appropriate arrangements for the Goods to be collected from the Seller's premises as specified in the Order Confirmation (or if agreed otherwise by the parties, at such other location as may be specified in the Order Confirmation) (the "**International Delivery Location**") within three (3) Business Days of the Seller notifying the Buyer that the Goods are ready.
- 5.2. Delivery shall be completed when the Seller places the Goods at the Buyer's disposal at the Delivery Location.
- 5.3. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.4. If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller 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 Buyer's failure to provide the Seller with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 5.5. If the Buyer fails to accept delivery of the Goods or (unless agreed otherwise by the parties) to collect the Goods within three (3) Business Days of the Seller notifying the Buyer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Seller's failure to comply with its obligations under the Contract in respect of the Goods:
  - 5.5.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourth Business Day following the day on which the Seller notified the Buyer that the Goods were ready; and
  - 5.5.2. the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 5.6. If ten (10) Business Days after the Seller notified the Buyer that the Goods were ready for collection or delivery the Buyer has not accepted or taken delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting

reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

- 5.7. The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

6. **TITLE AND RISK**

- 6.1. The risk in the Goods shall pass to the Buyer on completion of delivery at the Delivery Location.
- 6.2. Title to the Goods shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for:
- 6.2.1. the Goods; and
  - 6.2.2. any other goods that the Seller has supplied to the Buyer in respect of which payment has become due.
- 6.3. Until title to the Goods has passed to the Buyer, the Buyer shall:
- 6.3.1. store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller'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 Seller's behalf from the date of delivery, and shall produce evidence of such insurance upon request by the Seller.
  - 6.3.4. notify the Seller immediately if it becomes subject to any of the events listed in clause 14.1.4 to 14.1.13; and
  - 6.3.5. give the Seller such information relating to the Goods or the ongoing financial position of the Buyer as the Seller may require from time to time, but the Buyer may resell or use the Goods in the ordinary course of its business. However, if the Buyer resells the Goods before that time, title to those Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.
- 6.4. If the Buyer fails to insure the Goods as required in accordance with clause 6.3.3, the Seller may do so on behalf of the Buyer, who shall reimburse the Seller on demand.
- 6.5. Without limiting any other right or remedy of the Seller, if the Buyer fails to make any payment due to the Seller under the Contract after a further thirty (30) days after the Due Date, then, provided the Goods have not been resold, or irrevocably incorporated into another product, the Seller may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, the Seller may enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
- 6.6. The parties agree that sections 32(2) and (3) of the Sales of Goods Act 1979 shall not apply to the Contract.

**7. QUALITY OF GOODS**

- 7.1. The Seller warrants that on delivery the Goods shall:
- 7.1.1. conform in all material respects with the Technical Drawing; and
  - 7.1.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended).
- 7.2. Subject to clause 7.3, if:
- 7.2.1. the Buyer gives notice in writing within a reasonable time of discovery, and in any event within twelve (12) months of delivery, that some or all of the Goods do not comply with the warranty set out in clause 7.1;
  - 7.2.2. the Seller is given a reasonable opportunity of examining such Goods; and
  - 7.2.3. the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost, the Seller shall, at its option, repair or replace the defective Goods within a reasonable time, or refund the price of the defective Goods in full.
- 7.3. The Seller shall not be liable for the Goods' failure to comply with the warranty in clause 7.1 if:
- 7.3.1. the Buyer makes any further use of such Goods after giving a notice in accordance with clause 7.2;
  - 7.3.2. the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - 7.3.3. the defect arises as a result of the Seller following any drawing, design or specification for the Goods supplied by the Buyer;
  - 7.3.4. the Buyer alters or repairs such Goods without the written consent of the Seller;
  - 7.3.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 7.3.6. the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 7.4. Where Goods are returned to the Seller and such Goods are found not to be in breach of the warranty given in clause 7.1, the Seller shall have the right to charge the Buyer a handling fee in relation to the return of such Goods.
- 7.5. The Buyer shall not return the Goods to the Seller without notifying the Seller in writing in advance that the Goods are going to be returned.
- 7.6. Except as provided in this clause 7 and subject to the terms of clause 13.2, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.
- 7.7. The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Seller under clause 7.2.

8. **SUPPLY OF SERVICES**

- 8.1. The Seller shall provide the Services (if applicable) to the Buyer in accordance with the Order Confirmation.
- 8.2. The Seller shall use reasonable endeavours to meet any performance dates for the Services specified in the Order Confirmation but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3. The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.
- 8.4. The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.

9. **BUYER'S OBLIGATIONS**

- 9.1. The Buyer shall:
  - 9.1.1. ensure that the Order Confirmation and any other information provided to the Seller in relation to the Goods and / or Services, is complete and accurate;
  - 9.1.2. co-operate with the Seller in all matters relating to the Contract, the Goods and / or the Services;
  - 9.1.3. provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Seller to provide the Services;
  - 9.1.4. provide the Seller with such information and materials as the Seller may reasonably require to supply the Goods and / or the Services, and ensure that such information is accurate in all material respects;
  - 9.1.5. ensure that the Buyer's requirements as set out in the Order Confirmation and the Technical Drawing are compliant with all applicable health and safety requirements and any other requirements of applicable law which are applicable to the Goods and / or the Services.
- 9.2. If the Seller's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (a "**Buyer Default**"):
  - 9.2.1. the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve the Seller from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
  - 9.2.2. the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 9.2; and
  - 9.2.3. the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.



- 9.3. The Buyer shall comply, and procure that its employees and agents comply strictly with all instructions, warnings, data sheets and other materials supplied by the Seller with or in connection with the Goods and/or Services and if supplying the Goods to a third party, ensure that the Goods are accompanied by the same.
- 9.4. Where the Buyer has purchased products from the Seller with the intention of selling on to a business or individuals it is the Buyer's responsibility to perform due diligence checks to ensure compliance with worldwide trade sanctions, embargoes and dual use goods regulations where applicable.
- 9.5. Where the Buyer requests the Seller to deliver the Goods to a third party such as the Buyer's own customer or distributor the Buyer must ensure it complies with the requirements of clause 9.4 prior to placing a Purchase Order with the Seller.
- 9.6. The Seller may, where it considers it necessary to do so, require the Buyer to comply with the requirements of clause 9.4 (and provide evidence of such compliance to the Seller) prior to the Seller issuing the Order Confirmation and at any time prior to shipment of the Goods.

10. **CHARGES AND PAYMENT**

- 10.1. The Prices for the Goods shall be as set out in the Order Confirmation, as may be varied in accordance with clause 3.7 or 10.3. The Prices are exclusive of all costs and charges for taxation, packaging, insurance and transport of the Goods, which shall be paid by the Buyer when it pays for the Goods.
- 10.2. The Charges for the Services shall be as set out in the Order Confirmation as may be varied in accordance with clause 3.7 or 10.3. If the Charges are not detailed in the Order Confirmation they will be charged on a time and materials basis in accordance with the Seller's standard daily fee rates in force from time to time.
- 10.3. The Seller reserves the right to increase the Prices and / or Charges at any time before delivery upon notice to the Buyer, to reflect any increase in the cost of the Goods and/or Services to the Seller that is due to:
  - 10.3.1. any factor beyond the reasonable control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 10.3.2. any request by the Buyer to change the delivery date(s), quantities or types of Goods and / or Services ordered, or the Technical Drawing for the Goods including (without limitation) during the design and approval process set out in clause 3; and / or
  - 10.3.3. any delay caused by any instructions of the Buyer in respect of the Goods and / or Services, or failure of the Buyer to give the Seller adequate or accurate information or instructions in respect of the Goods and / or Services.
- 10.4. the Seller shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Seller engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Seller for the performance of the Services, and for the cost of any materials.
- 10.5. Unless provided otherwise in the Order Confirmation, the Seller will invoice the Buyer in respect of the Goods and Services at any time after the Goods are made available to the Buyer in accordance with clause 5.1 and 5.2.

- 10.6. The Buyer shall pay each invoice submitted by the Seller:
- 10.6.1. within thirty (30) days of the date of the invoice, or as otherwise stated in the Order Confirmation; and
  - 10.6.2. in full and in cleared funds in the currency specified by and to a bank account nominated in writing by the Seller.
- 10.7. Time for payment shall be of the essence of the Contract.
- 10.8. All amounts payable by the Buyer 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 Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 10.9. The Seller will apply zero-rated VAT to all Goods exported outside the UK, provided the Goods are removed from the UK within the timeframes specified by UK taxation authorities. To qualify for zero-rating, the Buyer must supply to the Seller documentary evidence confirming the physical export of the Goods. The time limits for exports, including Goods subject to further processing before export, are outlined by HMRC in VAT Notice 703, particularly in section 6.9. If these conditions are not met or the required evidence is not provided, the Buyer will be responsible for any applicable tax, which will be retrospectively applied to the order.
- 10.10. Without limiting any other right or remedy of the Seller, if the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment (the "**Due Date**"), the Seller shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Royal Bank of Scotland plc's base lending rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 10.11. The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer under the Contract or any other agreement between the parties.

## 11. **INTELLECTUAL PROPERTY RIGHTS**

- 11.1. The Buyer retains ownership of the Buyer IPR and grants to the Seller a non-exclusive, non-transferable, royalty-free licence (including the right to grant sub-licences to permitted subcontractors) to use the Buyer IPR for the purposes of designing, manufacturing and supplying the Goods and supplying the Services, and otherwise performing the Seller's obligations under the Contract.
- 11.2. Subject to the provisions of clause 11.1, any Intellectual Property Rights (i) in the Goods; (ii) arising from the performance of the Services; or (iii) in any documents or materials used or developed in the performance (or anticipated performance) of the Contract including (without limitation) in any quotation and / or preliminary designs issued by the Seller, the Order Confirmation and the Technical Drawing ("**Contract IPR**") shall be owned by the Seller.

- 11.3. The Seller grants to the Buyer a non-exclusive licence to use the Contract IPR for the purpose of utilising the Goods and Services supplied under the Contract. Save as expressly provided in this clause 11.3, the Buyer shall have no rights in respect of any of the Contract IPR and shall not without the Seller's written consent use any such Contract IPR except for the purposes specified in this clause 11.3.
- 11.4. The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Services and/or the Goods, the Buyer's use of any such Intellectual Property Rights is conditional on the Seller obtaining a written licence from the relevant licensor on such terms as will entitle the Seller to license such rights to the Buyer.
- 11.5. The Buyer shall indemnify the Seller 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 Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's Intellectual Property Rights or other rights arising out of or in connection with the Seller's use of the Buyer IPR. This clause 11.5 shall survive termination of the Contract.

12. **CONFIDENTIALITY**

- 12.1. Each party undertakes that it shall not disclose to any person any Confidential Information, except as permitted by clause 12.2.
- 12.2. Each party may disclose the other party's Confidential Information:
  - 12.2.1. 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, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 12; and
  - 12.2.2. as may be required by law, a court of competent jurisdiction, or any governmental or regulatory authority.
- 12.3. 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.
- 12.4. The parties acknowledge that the Contract IPR shall be treated as Confidential Information of the Seller for the purpose of the Contract.

13. **LIMITATION OF LIABILITY: THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**

- 13.1. References to liability in this clause 13 include every kind of liability:
  - 13.1.1. arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise; and
  - 13.1.2. for any use made or resale of the Goods by the Buyer, or of any product incorporating any of the Goods.
- 13.2. Nothing in these Conditions shall limit or exclude the Seller's liability for:
  - 13.2.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

- 13.2.2. fraud or fraudulent misrepresentation;
  - 13.2.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - 13.2.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
  - 13.2.5. defective products under the Consumer Protection Act 1987; or
  - 13.2.6. any liability that legally cannot be limited.
- 13.3. Subject to clause 13.2:
- 13.3.1. the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of goodwill, loss of business, loss of business opportunity, loss of anticipated savings, loss or corruption of data or information or any special, indirect or consequential loss arising under or in connection with the Contract; and
  - 13.3.2. the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with any Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Prices and the Charges paid under that Contract.
- 13.4. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 13.5. Without prejudice to the generality of clause 13.2, the Seller shall not be liable for any loss, damage, costs or expenses incurred by the Buyer as a result of:
- 13.5.1. the acts or omissions of any third party; or
  - 13.5.2. the Seller's reliance on the Buyer Materials in the design, manufacture and / or supply of the Goods and / or the supply of the Services.
- 13.6. This clause 13 shall survive termination of the Contract.

#### 14. **TERMINATION**

- 14.1. Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if:
- 14.1.1. the Buyer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;
  - 14.1.2. the Buyer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within twenty-eight (28) days after receipt of notice in writing of the breach;
  - 14.1.3. the Buyer repeatedly breaches any of the terms of the Contract in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
  - 14.1.4. the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ("**IA 1986**") as if the words "it is proved to the

- satisfaction of the court" did not appear in sections 123(1)(e) of 123(2) of the IA 1986;
- 14.1.5. the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 14.1.6. the Buyer applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
  - 14.1.7. a petition is filed, a notice is given, a resolution is passed or an order is made, for or in connection with the winding up of the Buyer other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
  - 14.1.8. an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given or an administrator is appointed over the Buyer;
  - 14.1.9. the holder of a qualifying floating charge over the assets of the Buyer has become entitled to appoint or has appointed an administrative receiver;
  - 14.1.10. a person becomes entitled to appoint a receiver over all or any of the assets of the Buyer or a receiver is appointed over all or any of the assets of the Buyer;
  - 14.1.11. a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
  - 14.1.12. any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in 14.1.4 to 14.1.11;
  - 14.1.13. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
  - 14.1.14. the Buyer'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; or
  - 14.1.15. the Buyer undergoes a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 14.2. Without affecting any other right or remedy available to it, the Seller may terminate the Contract on giving not less than one (1) month's written notice to the Buyer.
- 14.3. Without limiting its other rights or remedies, the Seller shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if:
- 14.3.1. the Buyer fails to pay any amount due under the Contract on the due date for payment; or
  - 14.3.2. the Buyer becomes subject to any of the events listed in clause 14.1.4 to 14.1.12, or the Seller reasonably believes that the Buyer is about to become subject to any of them.

- 14.4. The Buyer may immediately terminate the Contract on written notice to the Seller ("**Buyer's Termination Notice**") provided that the Buyer pays an early termination charge to the Seller, calculated as follows:
- 14.4.1. If the Buyer's Termination Notice provides for an effective point of termination which falls at any time between the Order Confirmation being issued and the approval of the Technical Drawing in accordance with clause 3, the early termination charge shall be the Design Costs; or
  - 14.4.2. If the Buyer's Termination Notice provides for an effective point of termination which falls at any time after the approval of the Technical Drawing in accordance with clause 3, the early termination charge shall be 100% of the Prices and the Charges.
- 14.5. The parties confirm that the early termination charges set out in clause 14.4 are reasonable and proportionate to protect the Seller's legitimate interest.

15. **CONSEQUENCES OF TERMINATION**

- 15.1. On termination of the Contract for any reason:
- 15.1.1. the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
  - 15.1.2. the accrued rights and remedies of the parties as at termination shall not be affected, 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; and
  - 15.1.3. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16. **SANCTIONS AND EXPORT CONTROL**

- 16.1. At all times during the term of the Contract the Buyer shall (i) not contravene any Sanctions; (ii) not do, or omit to do, any act that will cause or lead the Seller to contravene any Sanctions; and (iii) will implement adequate policies and procedures to ensure compliance with Sanctions.
- 16.2. The Buyer shall as soon as reasonably practicable notify the Seller in writing if (i) at any time during the term of the Contract it becomes aware of any breach or suspected breach of this clause 16 and it shall provide such information about such fact or circumstance or about the breach as the Seller requires to comply with its obligations to any Sanctions authority or otherwise reasonably requests.
- 16.3. If at any time during the term of the Contract the Buyer becomes a Sanctions Target, is subject to Sanctions proceedings or contravenes Sanctions or anything occurs that could reasonably be expected to result in any of these things happening, the Seller may in its absolute discretion and without affecting any other right or remedy available to it terminate the Contract with immediate effect by written notice to the Buyer.
- 16.4. Without affecting any other right or remedy available the Seller, any breach of this clause 16 by the Buyer shall constitute a material breach of the Contract, which is irremediable under clause 14.1.2.

17. **NO RE-EXPORT TO RUSSIA**

- 17.1. The Buyer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with the Contract.
- 17.2. The Buyer shall undertake its best efforts to ensure that the purpose of clause 17.1 is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- 17.3. The Buyer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of clause 17.1.
- 17.4. Any violation of clauses 17.1, 17.2 or 17.3 shall constitute a material breach of an essential element of the Contract, and without prejudice to any other rights or remedies available, including payment of the Prices and the Charges, the Seller shall be entitled to seek appropriate remedies, including, but not limited to:
- 17.4.1. termination of the Contract; and
- 17.4.2. liquidated damages of 50% of the total value of the Contract or price of the goods sold, whichever is higher.
- 17.5. The Buyer shall immediately inform the Seller about any problems in applying clauses 17.1, 17.2 or 17.3, including any relevant activities by third parties that could frustrate the purpose of paragraph 17.1. The Buyer shall make available to the Seller information concerning compliance with the obligations under paragraph 17.1, 17.2 and 17.3 within two weeks of the simple request of such information.

18. **FORCE MAJEURE**

- 18.1. If the Seller is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event, the Seller shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 18.2. If the Force Majeure Event prevents, hinders or delays the Seller from performance of its obligations for more than four (4) weeks, the Seller shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Buyer.

19. **GENERAL**

- 19.1. The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 19.2. The Buyer shall not, without the prior written consent of the Seller, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.3. Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by email to the other party's email address set out in the Order

Confirmation. Any notice or other communication shall be deemed to have been duly received (i) if delivered personally, when left at such address; (ii) if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; (iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or (iv) if sent by email, at the time of transmission if sent on a Business Day or, if not sent on a Business Day, at 9:00am on the next Business Day after transmission. This clause 19.3 shall not apply to the service of any proceedings or other documents in any legal action.

- 19.4. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent right or remedy. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 19.5. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 19.6. If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 19.7. Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 19.8. 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.
- 19.9. Except as set out in these Conditions, any variation, including the introduction of any additional terms and clauses, to the Contract shall only be binding when agreed in writing and signed by both parties (or their authorised representatives).
- 19.10. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law.
- 19.11. The parties irrevocably agree 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.
- 19.12. The Uniform Laws on International Sales Act 1967 and the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.