

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

The customer's attention is drawn in particular to the provisions of clause 11

1. INTERPRETATION**1.1 Definitions:**

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

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.8.

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: completion of delivery of an Order in accordance with clause 5.2 or 5.3(b) (as the case may be).

Delivery Date: the date specified for delivery of an Order as set out in the Order or otherwise agreed between the parties in writing.

Delivery Window: the date range specified for delivery of an Order or otherwise agreed between the parties in writing.

Force Majeure Event: has the meaning given in clause 13.

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

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the order by the Customer for the Goods, as set out in the Customer's purchase order.

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

Warranty Period: means

(a) the period of 6 weeks from the date of Delivery (or deemed Delivery) where Delivery is made in accordance with clause 5.2; or

(b) the period of 3 months from the date of Delivery (or deemed Delivery) where Delivery is made in accordance with clause 5.3(b).

Supplier: A2V Trade Limited (registered in England and Wales with company number 08102350).

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 or permitted assigns.

(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute

or statutory provision includes all subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) Any words following the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** includes e-mails.

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 and any applicable Specification 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, at which point the Contract shall come into existence.

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, descriptive matter, or advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's promotional material are issued or published 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 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue unless otherwise agreed by the Supplier in writing.

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 reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier:

(a) 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;

(b) in connection with the manufacture of any defects in the Goods to the extent due to any defect in 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 requirements.

4. SAMPLES

4.1 The Supplier shall, where requested, submit to the Customer for approval pre-production samples of the Goods.

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

4.2 The Supplier shall not commence manufacture of the Goods until the Customer has communicated its approval of the samples to the Supplier in writing (such approval not to be unreasonably withheld or delayed) or has otherwise provided confirmation of any changes or alterations that it requires the Customer to make.

4.3 The Customer's approval or confirmation of changes pursuant to clause 4.2 constitutes irrevocable confirmation that:

- (a) the Goods manufactured in conformity with the samples (or differing only within normal industrial limits) will comply with the Specification; and
- (b) the Goods will meet the industry standards and requirements of quality specified in clause 6, except for defects which are not capable of being revealed on reasonable inspection by the Customer.

5. DELIVERY

5.1 The Supplier shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant reference numbers of the Customer and the Supplier, 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; and
 - (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note.
- The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

5.2 Unless the parties have agreed in writing for Delivery to a shipping port, in which case clause 5.3 shall apply, the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) on the Delivery Date or within the Delivery Window (as applicable). Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

5.3 If the Supplier has agreed to deliver the Goods to a shipping port the following provisions shall apply:

- (a) the Supplier shall deliver the Goods to the port specified on the Order on the Delivery Date or within the Delivery Window (as applicable); and
- (b) Delivery of the Goods shall be completed on the completion of the loading of the Goods by the Supplier into the Customer's freight forwarder's shipping container.

5.4 Where the Supplier has attempted Delivery in accordance with clause 5.2 or 5.3 and the Customer fails to accept Delivery of the Goods on the Delivery Date or within the Delivery Window (which shall include where the Customer's freight forwarder for any reason prevents the Supplier from loading the Goods into the shipping container), 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:

- (a) Delivery of the Goods shall be deemed to have been completed at 9:00 am on the Delivery Date or the last date in the Delivery Window (as applicable); and

(b) the Supplier shall store the Goods until Delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.5 Any dates quoted for Delivery are approximate only and the time of Delivery is not of the essence. The Supplier shall not be liable for any delay in Delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions (including sample approval) that are relevant to the supply of the Goods.

5.6 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.

5.7 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

5.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. QUALITY

6.1 The Supplier warrants that on Delivery and for the applicable Warranty Period the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

6.2 Subject to clause 6.3 and 6.4, if:

- (a) the Customer gives notice in writing to the Supplier during the applicable Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1; and
- (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 place of business of the Supplier at the cost of the Supplier, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.3 If a defect is apparent on normal visual inspection but the Customer fails to notify the Supplier of such defect within **[five]** Business Days of Delivery, the Customer shall be deemed to have accepted the Goods save that such acceptance shall not apply to any latent defect which shall

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

be notifiable by the Customer to the Supplier in accordance with clause 6.2.

6.4 The Supplier shall not be liable for the Goods failure to comply with the warranty set out in clause 6.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2; or
- (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; or
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer; or
- (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; or
- (f) the Goods differ from their description or Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.5 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.

6.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

7. TITLE AND RISK

7.1 The risk in the Goods shall pass to the Customer on completion of Delivery.

7.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.

7.3 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 10.1; 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.

7.4 Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

7.5 At any time before title to the Goods passes to the Customer, the Supplier:

- (a) may by notice in writing, terminate the Customer's right under clause 7.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. PRICE AND PAYMENT

8.1 The price of the Goods shall be the price set out in the Order.

8.2 The Supplier may, by giving notice to the Customer at any time up to 60 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); or
- (b) any request by the Customer to change the Delivery D/*ate(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.

8.3 The Order will state if the price of the Goods is inclusive or exclusive of the costs and charges of packaging, insurance and transport of the Goods.

8.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

8.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of Delivery.

8.6 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; 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.

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

8.7 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 10 (Termination), 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 8.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

8.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

9.1 The Customer acknowledges that all Intellectual Property Rights used for the manufacture of any Goods and in the Goods including without limitation designs, branding or Specifications, are and shall remain the exclusive property of the Supplier (or, where applicable, the third party licensor from whom the Supplier derives the right to use them) regardless of whether the Specification was provided by the Customer (**Goods IPR**).

9.2 Consequently the Customer assigns with full title guarantee and free from all third party rights, all Intellectual Property Rights in any and all documents, information, items and materials in any form, which are provided by the Customer to the Supplier in connection with the manufacture and/or supply of the Goods but excluding the Customer's own existing corporate branding.

9.3 In the event the Customer wishes to use any Goods IPR for any reason other than the resale of Goods in the ordinary course of business this will be subject to the Supplier agreeing and entering into a licence agreement for such use with the Customer on terms satisfactory to the Supplier.

10. TERMINATION

10.1 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 30 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.

10.2 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 10.1(b) to clause 10.1(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.

10.3 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.

10.4 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.

10.5 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.

10.6 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.

11. LIMITATION OF LIABILITY

11.1 The restrictions on liability in this clause 11 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

11.2 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.

11.3 Subject to clause 11.2, the Supplier's total liability to the Customer shall not exceed an amount equal to 100% of the price of the Goods.

11.4 Subject to clause 11.2, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

- (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.

11.5 This clause 11 shall survive termination of the Contract.

12. FORCE MAJEURE

12.1 Neither party shall be in breach of the Contract nor liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay results from a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, pandemics, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12.2 In the circumstances described in clause 12.1 the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

13. GENERAL**13.1 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.

13.2 Notices.

(a) Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier or e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery

receipt is signed; or, if sent by e-mail, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3 Confidentiality

(a) Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.3(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives 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 or advisers to whom it discloses the other party's confidential information comply with this clause 13.2; 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.

13.4 Entire Agreement.

(a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

13.5 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 13.5 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.

13.6 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

13.7 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

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

13.9 **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.

13.10 **Governing law and jurisdiction.** 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 the law of England and Wales, and 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 this Contract or its subject matter or formation.