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## TURBOSMART UK LTD - TERMS AND CONDITIONS FOR THE SALE OF GOODS

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The Buyer's attention is drawn in particular to the provisions of clause 9.

### 1. Interpretation

1.1. In these Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>"Business Day"</b>	means any day other than a Saturday, Sunday or public holiday when banks in London are open for business;
<b>"Buyer"</b>	means the person or organisation who accepts a quotation or offer of the Seller for the sale of the Goods or whose Order is accepted by the Seller;
<b>"Conditions"</b>	means the terms and conditions set out in this document;
<b>"Contract"</b>	means the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions;
<b>"Contract Price"</b>	means the price payable by the Buyer for the Goods under the Contract;
<b>"Delivery Date"</b>	means the date on which the Goods are to be delivered as stipulated in the Buyer's Order and accepted by the Seller, as evidenced in the Contract;
<b>"Force Majeure Event"</b>	an event, circumstance or cause beyond a party's reasonable control.
<b>"Goods"</b>	means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with the Contract;
<b>"Intellectual Property Rights"</b>	means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>"Month"</b>	means a calendar month;
<b>"Online Sales"</b>	means the placement of Orders via the Seller's website;
<b>"Order"</b>	means the Buyer's order for the Goods as set out in the Buyer's written acceptance of the Seller's quotation or in the Buyer's purchase order form.
<b>"Seller"</b>	means Turbosmart UK Ltd a company registered in England under 08976661 of c/o Unit 4 Wharton Street Industrial Estate, Wharton Street, Birmingham, West Midlands, B7 5TR;
<b>"Settlement Discount"</b>	means any discount offered to the Buyer in writing by the Seller's authorised representative, conditional upon the Seller receiving the Contract Price minus the offered discount in clear funds prior to given date(s) in accordance with such offer; and
<b>"Specification"</b>	any specification for the Goods, pursuant to clause 4.1.

1.2. Unless the context otherwise requires, each reference in these Conditions to:

- 1.2.1. "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2. a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

- 1.2.3. "these Conditions" is a reference to these Conditions as amended or supplemented at the relevant time;
  - 1.2.4. a clause or paragraph is a reference to a clause of these Conditions;
  - 1.2.5. a "Party" or the "Parties" refer to the parties to the Contract.
- 1.3. The headings used in these Conditions are for convenience only and shall have no effect upon the interpretation of these Conditions.
  - 1.4. Words imparting the singular number shall include the plural and vice versa.
  - 1.5. References to any gender shall include the other gender.

## **2. Basis of Sale**

- 2.1. 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 law, trade custom, practice or course of dealing.
- 2.2. The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order is complete and accurate.
- 2.3. The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4. The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.
- 2.5. Any samples, drawings, descriptive matter, or advertising issued by the Seller and any price lists, descriptions or illustrations contained in the Seller's catalogues, brochures or on their website are subject to alteration without notice and are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Seller and the Buyer for the sale of the Goods.
- 2.6. A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 5 Business Days from its date of issue.
- 2.7. Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## **3. Orders and Specifications**

- 3.1. The Specification shall be that set out in the Seller's sales documentation unless varied expressly in the Buyer's Order (if such variation(s) is/are accepted by the Seller). Illustrations, photographs or descriptions whether in catalogues, brochures, price lists, websites or other documents issued by the Seller are intended as a guide only and shall not be binding on the Seller.
- 3.2. The Seller reserves the right to make any changes in the Specification which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Buyer's Specification, which do not materially affect their quality or performance. Any change in the Specification to which this clause 3.2 applies will not constitute a breach of the Seller's obligations under the Contract.
- 3.3. No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation.
- 3.4. To the extent that the Goods are to be manufactured in accordance with the Buyer's Specification supplied by the Buyer, 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 reasonable 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 arising out of or in connection with the Seller's use of the Specification. This clause 3.4 shall survive termination of the Contract.

## **4. Price and Payment**

- 4.1. The Contract Price of the Goods shall be the price set out in the Order, or such other price as may be agreed in writing by the Seller and the Buyer.

4.2. The Seller reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to:-

- 4.2.1. any factor beyond the control of the Seller (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increases in taxes and duties, increases in the costs of labour, materials or other costs of manufacture) or
- 4.2.2. any change in delivery dates, quantities or Specifications which are requested by the Buyer or
- 4.2.3. any delay caused by any instructions of the Buyer.

4.3. The Seller may allow the Buyer quantity discounts subject to and in accordance with the conditions set out in the Seller's published price list for the Goods current at the date of acceptance of the Buyer's Order.

4.4. Any Settlement Discount offered by the Seller to the Buyer will be allowed by the Seller to the Buyer in respect of Goods for which payment is received by the Seller on or before the due date and otherwise in accordance with the payment terms set out in these Conditions and provided that no other amounts owing by the Buyer to the Seller are overdue and unpaid.

4.5. Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are exclusive of the Seller's charges for packaging and transport.

4.6. The Contract Price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods, which the Buyer shall be additionally liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid invoice.

4.7. Subject to clauses 4.8 and 4.9 and any special terms agreed in writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the Contract Price of the Goods on or at any time after delivery of the Goods or as otherwise expressly stated in these Conditions, unless:-

- 4.7.1. the Goods are to be collected by the Buyer or
- 4.7.2. the Buyer wrongfully fails to take delivery of the Goods

and in either such case the Seller shall be entitled to invoice the Buyer for the Contract Price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

4.8. Where the Buyer does not have an account open with the Seller, the Buyer will request an Order from the Seller and the Seller will issue an official estimate or sales order, requiring the Buyer to pay the Contract Price prior to delivery of the Goods. Upon payment of the Contract Price, the Seller will proceed with fulfilling the Order.

4.9. In the case of Online Sales, payment will be made when the Order is placed. The Order will remain subject to acceptance by the Seller in accordance with clause 2.3. If the Order is not accepted, payment will be refunded to the Buyer within 28 days of the Seller receiving the cleared funds.

4.10. Except for Online Sales, the Seller may invoice the Buyer for the Goods on or at any time after the completion of delivery.

4.11 The Buyer shall pay each invoice submitted by the Seller:

- 4.11.1 within 30 days of the date of the end of the month in which the invoice is issued or in accordance with any credit terms agreed by the Seller and confirmed in writing to the Buyer;
- 4.11.2 in full and cleared funds to a bank account nominated in writing by the Seller; and

time for payment shall be of the essence of the Contract.

4.12. If the Buyer fails to make a payment due to the Seller under the Contract by the due date, then, without limiting the Seller's remedies under clause 10, the Buyer 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 4.12 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%.

4.13. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). 4.14. The Seller is not obliged to accept Orders from any Buyer who has not supplied the Seller with references satisfactory to the Seller.

4.14.1. If at any time the Seller is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer.

4.14.2. If such notice is given then:-

4.14.2.1. no further goods will be delivered to the Buyer other than against cash payment and

4.14.2.2. notwithstanding any pre-existing credit allowance or arrangement made between the Seller and the Buyer or otherwise referred to in these Conditions,, all amounts owing by the Buyer to the Seller shall be immediately payable in cash.

## 5. Delivery

5.1. Delivery of the Goods shall be made by the Seller's courier delivering the Goods to the place specified in the Buyer's Order or such other location as the parties may agree.

5.2. Where the Seller's courier is delivering the Goods, delivery is completed on the loading of the Goods at the Buyer's premises.

5.3. Where the Buyer is collecting the Goods from the Buyer's premises or such other location as may be advised by the Buyer prior to delivery (**Delivery Location**), they shall do so within three Business Days of the Buyer notifying the Seller that the Goods are ready to collect.

5.4. Where the Seller is collecting the Goods, delivery is completed on the completion of loading of the Goods at the Delivery Location.

5.5. The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller's courier in advance of the Delivery Date upon giving reasonable notice to the Buyer.

5.6. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller's courier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

5.7. If the Buyer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date then except where such failure or delay is caused by a Force Majeure Event, or the Seller's failure to comply with its obligations under the Contract in respect of the Goods:

5.7.1. the Seller shall be entitled upon giving written notice to the Buyer to store or arrange for the storage of the Goods; and

5.7.2. notwithstanding the provisions of clause 6.1, risk in the Goods shall pass to the Buyer, delivery shall be deemed to have taken place on the Delivery Date; and

5.7.3. the Buyer shall pay to the Seller all costs and expenses including storage and insurance charges arising from such failure.

5.8. If the Seller's courier fails to deliver the Goods or any part thereof on the Delivery Date other than in relation to a Force Majeure Event or the Buyer's fault:

5.8.1. if the Seller's courier delivers the Goods at any time thereafter the Seller shall have no liability in respect of such late delivery; and

5.8.2. if the Seller's courier fails to deliver the Goods at any time thereafter, the Seller's 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 Contract Price of the Goods.

5.9. The Seller shall have no liability for any failure of the Seller's courier 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 or any other instructions that are relevant to the supply of the Goods.

5.10. If ten Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not taken actual 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.

## **6. Risk and Retention of Title**

- 6.1. Risk of damage to or loss of the Goods shall pass to the Buyer at:
- 6.1.1. in the case of Goods to be delivered at the Seller's premises, the time when the Seller's courier takes possession of the Goods; or
  - 6.1.2. in the case of Goods to be delivered otherwise than at the Seller's premises, the time when the Seller's courier takes possession of the Goods; or
  - 6.1.3. if the Buyer organises its own collection and transport - at the time the Goods are delivered to the Buyer's nominated couriers.
- 6.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, legal and beneficial title of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods.
- 6.3. Notwithstanding clause 6.2, legal and beneficial title of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Contract Price of the Goods and any other goods supplied by the Seller and the Buyer has paid all moneys due to the Seller, regardless of how such indebtedness arose.
- 6.4. Until payment has been made to the Seller in accordance with these Conditions and the Contract and title in the Goods has passed to the Buyer, the Buyer shall be in possession of the Goods as bailee for the Seller and the Buyer shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by the Seller and shall insure the Goods against all reasonable risks.
- 6.5. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all money owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 6.6. The Seller reserves the right to repossess any Goods in which the Seller retains title without notice. The Buyer irrevocably authorises the Seller to enter the Buyer's premises during normal business hours for the purpose of repossessing the Goods in which the Seller retains title or inspecting the Goods to ensure compliance with the storage and identification requirements of clause 6.4.
- 6.7. The Buyer's right to possession of the Goods in which the Seller maintains legal and beneficial title shall terminate if:
- 6.7.1. the Buyer commits or permits any material breach of his obligations under these Conditions;
  - 6.7.2. the Buyer enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986, the Insolvent Partnerships Order 1994 (as amended), or any similar other scheme or arrangement (whether under English law or otherwise) is made with its creditors;
  - 6.7.3. the Buyer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
  - 6.7.4. the Buyer convenes any meeting of its creditors;
  - 6.7.5. the Buyer enters into voluntary or compulsory liquidation;
  - 6.7.6. the Buyer has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof;
  - 6.7.7. any documents are filed with the court for the appointment of an administrator in respect of the Buyer;
  - 6.7.8. notice of intention to appoint an administrator is given by the Buyer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986);
  - 6.7.9. a resolution is passed or petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer; or
  - 6.7.10. any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

- 6.7.11. the Buyer ceases, or threatens to cease, to carry on business; or
- 6.7.12. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

## **7. Assignment**

- 7.1. The Seller may assign the Contract or any part of it to any person, firm or company without the prior consent of the Buyer.
- 7.2. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

## **8. Quality of Goods**

- 8.1. The Seller warrants that on delivery and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:

- 8.1.1 conform in all material respects with their description and any applicable Specification;
- 8.1.2 be free from material defects in design, material and workmanship;
- 8.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 8.1.4 be fit for any purpose held out by the Seller.

- 8.2 Subject to clause 8.3, if:

- 8.2.1 the Buyer gives notice in writing to the Seller during the 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 8.1;
- 8.2.2 the Seller is given a reasonable opportunity of examining such Goods; and
- 8.2.3 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, or refund the price of the defective Goods in full.

- 8.3 The Seller shall not be liable for the Goods' failure to comply with the warranty set out in clause 8.1 if:

- 8.3.1 the Buyer makes any further use of such Goods after giving notice in accordance with clause 8.2;
- 8.3.2 the defect arises because the Buyer failed to follow the Seller'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;
- 8.3.3 the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer;
- 8.3.4 the Buyer alters or repairs such Goods without the written consent of the Seller;
- 8.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 8.3.6 the Goods differ from their description or any applicable Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 8.4 Except as provided in this clause 8, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 8.1.

- 8.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

8.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

## **9. Limitation of Liability**

9.1. The restrictions on liability in this clause 9 set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- 9.1.1. any breach of these Conditions
- 9.1.2. any use made (including but not limited to modifications) or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 9.1.3. any liability in contract, tort, misrepresentation, restitution, statement or tortious act or omission including negligence arising under or in connection with the Contract.

9.2. Nothing in these Conditions excludes or limits the liability of the Seller:

- 9.2.1. for death or personal injury caused by the Seller's negligence;
- 9.2.2. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 9.2.3. for fraud or fraudulent misrepresentation; or
- 9.2.4. defective products under the Consumer Protection Act 1987.

9.3. Subject to clauses 9.1 and 9.2 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price.

9.5 Subject to clauses 9.1 and 9.2 the following types of losses are wholly excluded:

- 9.5.1 loss of profits;
- 9.5.2 loss of sales or business;
- 9.5.3 loss of agreements or contracts;
- 9.5.4 loss of anticipated savings;
- 9.5.5 loss of use or corruption of software, data or information;
- 9.5.6 loss of or damage to goodwill; or
- 9.5.7 indirect or consequential loss.

9.6 This clause 9 shall survive termination of the Contract.

## **10. Termination**

10.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:

- 10.1.1 the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- 10.1.2 the Buyer 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;
- 10.1.3 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

10.1.4 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.

10.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 10.1.1 to clause 10.1.2, or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer 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 Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer 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 Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer 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. Confidentiality, Publications and Endorsements**

11.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.

11.2. Each party may disclose the other party's confidential information:

11.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. 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 11; and

11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

11.4 The Buyer will not use, authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which the Seller is licensed to use or which is owned by the Seller upon any premises, note paper, visiting cards, advertisement or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its licensor.

11.5. The Buyer will use all reasonable endeavours to ensure compliance with this clause 11 by its employees, servants and agents.

11.6. The provisions of this clause 11 shall survive the termination of the Contract.

## **12. Intellectual property rights**

12.1. All Intellectual Property Rights in or arising out of or in connection with the Goods shall be owned by the Seller.

12.2. The Buyer will not do or permit to be done any act or thing which might in any way have a detrimental impact upon the goodwill or Intellectual Property Rights of the Seller or the Goods.

12.3. The Buyer shall indemnify the Seller in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and



expenses) suffered or incurred by the Seller arising out of or in connection with any claim brought against the Seller, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt or use of any related plans, drawings, designs or Specifications provided by the Buyer to the Seller, pursuant to the Order for the Goods.

12.4. In this clause references to the Seller include any associated or parent or subsidiary company of the Seller.

### **13. Communications**

13.1. All notices under these Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

13.2. Notices shall be deemed to have been duly given:

- 13.2.1. when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or
- 13.2.2. when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
- 13.2.3. on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- 13.2.4. on the tenth business day following mailing, if mailed by airmail, postage prepaid.

13.3. All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

### **14. Force Majeure**

14.1. Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.

### **15. Variation**

15.1 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

### **16. Entire Agreement**

16.1 The Contract constitutes the entire agreement between the parties.

16.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

### **17. Waiver**

17.1. The Parties agree that no failure by either Party to enforce the performance of any provision in these Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

### **18. Severance**

18.1. If any court or competent authority finds that any provision of these Conditions or the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

18.2. If any invalid, unenforceable or illegal provision of the Conditions or Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**19. Third Party Rights**

19.1. A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

**20. Law and Jurisdiction**

20.1. These Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

20.2. Any reference to any statute or other legal provision shall be construed as referring to any law or statute or provision amending or replacing the same mutatis mutandis.

20.3. Any dispute, controversy, proceedings or claim between the Parties relating to these Conditions or the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the exclusive jurisdiction of the courts of England and Wales.