

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.7.

Contract: the contract between the Manufacturer and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Deliverables: the deliverables set out in the Order produced by the Manufacturer for the Customer.

Delivery means Ex Works (**Incoterms 2020**)

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 17.

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

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

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks 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.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form.

Services: the services, including the Deliverables, supplied by the Manufacturer to the Customer as set out in the Service Specification.

Service Contract the repair and maintenance package as amended from time to time.

Service Specification: the description or specification for the Services provided in writing by the Manufacturer to the Customer as amended from time to time.

Manufacturer: Versalift United Kingdom Limited registered in England and Wales with company number 02888311.

Manufacturer Materials: has the meaning given in clause 8.1.8.

Data Protection Legislation: data protection and privacy legislation in force from time to time

1.2 **Interpretation:**

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.5 A reference to **writing** or **written** includes fax..

2. Basis of Contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Manufacturer issues written acceptance of the Order Entry and Acknowledgement (**Order**) at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Manufacturer may require the Customer to pay a non-refundable minimum deposit of 10% of the total value of the Order for Goods as security of performance.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Manufacturer and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 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.
- 2.6 Any quotation given by the Manufacturer shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.7 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. Goods

- 3.1 The Goods are described in the Manufacturer's catalogue as modified by any applicable Goods Specification.
- 3.2 The Manufacturer reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Manufacturer shall notify the Customer in any such event.

4. Delivery of Goods

- 4.1 The Manufacturer shall ensure that: each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Manufacturer reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
- 4.2 The Manufacturer shall deliver the Goods to the location set out in the Order (**Delivery**) or such other location as the parties may agree (**Delivery Location**) at any time after the Manufacturer notifies the Customer that the Goods are ready.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

- 4.4 The Manufacturer 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 Manufacturer with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5. Quality of Goods

- 5.1 The Manufacturer warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:
- 5.1.1 conform in all material respects with their description and any applicable Goods Specification;
- 5.1.2 be free from material defects in design, material and workmanship; and
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 5.1.4 be fit for any purpose held out by the Manufacturer.
- 5.2 Subject to clause 5.3, the Manufacturer shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
- 5.2.1 the Customer gives notice in writing 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 5.1;
- 5.2.2 the Manufacturer is given a reasonable opportunity of examining such Goods; and
- 5.2.3 the Customer (if asked to do so by the Manufacturer) returns such Goods to the Manufacturer's place of business at the Customer's cost.
- 5.3 The Manufacturer shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- 5.3.2 the defect arises because the Customer failed to follow the Manufacturer'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;
- 5.3.3 the defect arises as a result of the Manufacturer following any drawing, design or Goods Specifications supplied by the Customer;
- 5.3.4 the Customer alters or repairs such Goods without the written consent of the Manufacturer.
- 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 5.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, the Manufacturer shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Manufacturer.

6. Title and Risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of Delivery and it is the Customer responsibility to ensure that the Goods are insured.

- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 6.2.1 the Manufacturer receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Manufacturer 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
- 6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Manufacturer'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 Manufacturer's behalf from the date of delivery;
- 6.3.4 notify the Manufacturer immediately if it becomes subject to any of the events listed in clause 15.2.1 to clause 15.2.3; and
- 6.3.5 give the Manufacturer such information relating to the Goods as the Manufacturer may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Manufacturer receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 6.4.1 it does so as principal and not as the Manufacturer's agent; and
- 6.4.2 title to the Goods shall pass from the Manufacturer to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.2.1 to clause 15.2.3, then, without limiting any other right or remedy the Manufacturer may have:
- 6.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- 6.5.2 the Manufacturer may at any time:
- 6.5.2.1 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- 6.5.2.2 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.
- 7. Supply of Services**
- 7.1 The Manufacturer shall supply the Services to the Customer in accordance with the Service Specification in all material respects. .
- 7.2 The Manufacturer shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only

- and time shall not be of the essence for the performance of the Services.
- 7.3 The Manufacturer reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Manufacturer shall notify the Customer in any such event.
- 7.4 The Manufacturer warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8. Customer's Obligations**
- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
- 8.1.2 co-operate with the Manufacturer in all matters relating to the Services;
- 8.1.3 provide the Manufacturer, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Manufacturer to provide the Services;
- 8.1.4 provide the Manufacturer with such information and materials as the Manufacturer may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 8.1.5 prepare the Customer's premises for the supply of the Services;
- 8.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.
- 8.1.7 comply with all applicable laws, including health and safety laws;
- 8.1.8 keep all materials, equipment, documents and other property of the Manufacturer (**Manufacturer Materials**) at the Customer's premises in safe custody at its own risk, maintain the Manufacturer Materials in good condition until returned to the Manufacturer, and not dispose of or use the Manufacturer Materials other than in accordance with the Manufacturer's written instructions or authorisation; and
- 8.1.8.1 comply with any additional obligations as set out in the Service Specification and the Goods Specification; and
- 8.1.8.2 ensure that the vehicle that is due or booked for a service is available to the Manufacturer in good time.
- 8.2 If the Manufacturer's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.2.1 without limiting or affecting any other right or remedy available to it, the Manufacturer shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the

- Customer Default prevents or delays the Manufacturer's performance of any of its obligations;
- 8.2.2 the Manufacturer shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Manufacturer's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- 8.2.3 the Customer shall reimburse the Manufacturer on written demand for any costs or losses sustained or incurred by the Manufacturer arising directly or indirectly from the Customer Default.

9. Charges and Payment

- 9.1 The price for Goods:
- 9.1.1 shall be the price set out in the Order or, if no price is quoted, the price set out in the Manufacturer's published price list as at the date of the order; and
- 9.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.
- 9.2 The charges for Services shall be calculated on a time and materials basis:
- 9.2.1 the charges shall be calculated in accordance with the Manufacturer's rates, as set out in its current price list at the date of the Contract or the Order;
- 9.2.2 the Manufacturer's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- 9.2.3 the Manufacturer shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2.2; and
- 9.2.4 the Manufacturer shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Manufacturer engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Manufacturer for the performance of the Services, and for the cost of any materials.
- 9.3 The Manufacturer reserves the right to:
- 9.3.1 increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index ;
- 9.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Manufacturer that is due to:
- 9.3.2.1 any factor beyond the control of the Manufacturer (including foreign exchange fluctuations, increases in

- taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.3.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- 9.3.2.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Manufacturer adequate or accurate information or instructions in respect of the Goods.
- 9.3.2.4 impose storage charges of £45 per day if a vehicle remains on-site for more than 30 days, awaiting authorization for repairs from the Customer."
- 9.4 In respect of Goods, the Manufacturer shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Manufacturer shall invoice the Customer on completion of the Services monthly in arrears.
- 9.5 The Customer shall pay each invoice submitted by the Manufacturer:
- 9.5.1 for Goods prior to the delivery of the Goods to the Customer;
- 9.5.2 For Services within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Manufacturer and confirmed in writing to the Customer; and
- 9.5.3 in full and in cleared funds to a bank account nominated in writing by the Manufacturer, and time for payment shall be of the essence of the Contract.
- 9.6 All amounts payable by the Customer 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 Manufacturer to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Manufacturer, pay to the Manufacturer 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.
- 9.7 If the Customer fails to make a payment due to the Manufacturer under the Contract by the due date, then, without limiting the Manufacturer's remedies under clause 14 (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 9.7 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%.
- 9.8 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).
- ## 10. Intellectual Property Rights
- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Manufacturer.
- 10.2 The Manufacturer grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-

up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence

10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.

10.4 The Customer grants the Manufacturer a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Manufacturer for the term of the Contract for the purpose of providing the Services to the Customer.

11. Data Protection

11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 11, **Applicable Laws** means (for so long as and to the extent that they apply to the Manufacturer) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Manufacturer is the processor.

11.3 Without prejudice to the generality of clause 11.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Manufacturer for the duration and purposes of the Contract.

11.4 Without prejudice to the generality of clause 11.1, the Manufacturer shall, in relation to any personal data processed in connection with the performance by the Manufacturer of its obligations under the Contract:

11.4.1 process that personal data only on the documented written instructions of the Customer unless the Manufacturer is required by Applicable Laws to otherwise process that personal data. Where the Manufacturer is relying on Applicable Laws as the basis for processing personal data, the Manufacturer shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Manufacturer from so notifying the Customer;

11.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that

11.4.3 availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

11.4.4 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

11.4.4.1 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

11.4.4.2 the Customer or the Manufacturer has provided appropriate safeguards in relation to the transfer;

11.4.4.3 the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;

11.4.4.4 the Manufacturer complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and the Manufacturer complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

11.4.4.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

11.4.4.6 notify the Customer without undue delay on becoming aware of a personal data breach;

11.4.4.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and

11.4.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Manufacturer, an instruction infringes the Data Protection Legislation.

11.5 Either party may, at any time on not less than 30 days' notice, revise this clause 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

12. Confidentiality

12.1 Each party undertakes that it shall not at any time, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or Manufacturers of the other party or of any member of the group of companies to which the other party belongs, 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 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 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 this agreement.

13. Limitation of liability:

- 13.1 The Manufacturer has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £10,000,000.00 per claim. The limits and exclusions in this clause reflect the insurance cover the Manufacturer has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 13.2 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 13.3.1 death or personal injury caused by negligence;
- 13.3.2 fraud or fraudulent misrepresentation;
- 13.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- 13.4 The Manufacturer's total liability to the Customer shall not exceed £10,000,000.00.
- 13.5 The Manufacturer has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.6 Unless the Customer notifies the Manufacturer that it intends to make a claim in respect of an event within the notice period, the Manufacturer shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred **OR** its having grounds to make a claim in respect of the event and shall expire 1 month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 13.7 This clause 13 shall survive termination of the Contract.

14. Right to renegotiate or terminate

- 14.1 If at any time after Brexit a Brexit Trigger Event occurs which has or is likely to have an Adverse Impact on the Manufacturer, the Manufacturer may:
- 14.1.1 require the Customer to negotiate an amendment to this agreement to alleviate the Adverse Impact, in accordance with clause 14.5; and
- 14.1.2 if renegotiation fails, terminate this agreement in accordance with clause 14.6.
- 14.2 **Brexit.** The UK ceasing to be a member state of the European Union on 31 January 2020 and ceasing to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union negotiated under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union
- 14.3 **Brexit Trigger Events.** A Brexit Trigger Event means any of the following events if directly and/or solely caused by Brexit or any discussions, proposals, negotiations or any other steps taken by the UK government or a body in any other jurisdiction in anticipation of or related to preparation for Brexit:
- 14.3.1 **Change in Law:** a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party. For these purposes, **Law** means any legal provision a party must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, enforceable EU right within the meaning of section 2 of the European Communities Act 1972 (as saved and modified by the European Union (Withdrawal) Act 2018), bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;
- 14.3.2 **Trade tariff:** in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports of or any raw materials or components used by the Manufacturer to manufacture the Goods or any products into which the Goods are to be incorporated or in conjunction with which the Goods are to be commercially exploited;
- 14.3.3 **Licence or consent:** in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by a party to perform the agreement or to commercially exploit the Goods or Services;
- 14.3.4 **Currency Fluctuation:** a change of more than 5 % to the rate of exchange of sterling against the US Dollar or Euro since the price for the Goods was last agreed. The rate of exchange for these purposes shall be the daily spotexchange rate published by the Bank of England;
- 14.3.5 **Other change:** an unforeseeable (at the Effective Date) change to the business or economic environment in which the Manufacturer operates which is not caused by clause 14.3.1 to clause 14.3.3 above or by any fluctuation in currency exchange rates.
- 14.4 **Adverse Impact.** An Adverse Impact means any one of the following:
- 14.4.1 a substantial adverse impact on the Manufacturer's ability to perform the agreement in accordance with its terms and the Law and/or;

- 14.4.2 a substantial adverse impact on the Manufacturer's supply chain that result in a substantial adverse impact on the Manufacturers ability to perform the agreement in accordance with its terms and the Law.
- 14.4.3 an increase in the costs incurred by the Manufacturer in performing the agreement of at least 5% since the price for the Goods was last agreed;
- 14.4.4 the price of the Goods under this agreement is at least 5% lower than the market value for similar products or services (an impact on the Manufacturer);
- 14.5 **Renegotiation.** The Manufacturer may initiate a negotiation under clause 14.1.1 by a notice (**Brexit Notice**) giving reasonable details of the relevant Brexit Trigger Event and Adverse Impact. The Manufacturer may, at any time, serve a new Brexit Notice, but the Manufacturer cannot serve more than one Brexit Notice for the same impact. On delivery of a Brexit Notice:
- 14.5.1 the parties shall meet within 7 days of the date of the Brexit Notice and as reasonably necessary thereafter to discuss in good faith amendments to this agreement;
- 14.5.2 the Manufacturer shall promptly comply with all reasonable requests made by the Customer for additional information and documents relating to the Adverse Impact suffered and the Brexit Trigger Event relied on, always provided that information so disclosed shall be a party's confidential information for the purposes of clause 12 (Confidentiality); and
- 14.5.3 any amendments to this agreement shall be recorded in writing, signed by the parties.
- 14.6 **Termination.** If the parties fail to agree a variation in accordance with clause 14.5 within a 30 day period of the date of the Brexit Notice, the Manufacturer may, without affecting any other right or remedy available to it, terminate this agreement by giving the Customer not less than 30 Days and not more than 60 Days written notice.. On termination under this clause, clause 16 (Consequences of termination) shall apply.
- 14.7 **Performance after a Brexit Notice.** After delivery of a Brexit Notice, until this agreement is varied under clause 14.5 or terminated, the Customer shall, unless prohibited by law, continue to comply with the terms of this agreement, the Manufacturer need only use reasonable endeavours to comply with its obligations insofar as they are affected by the relevant Adverse Impact.
- 14.8 **Overlap with other rights and obligations.** Save as expressly provided in this clause 14, neither a Brexit Trigger Event nor an Adverse Impact shall terminate or alter (or give The Customer a right to terminate or alter) this contract, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this clause and any other provision of this agreement, the provisions of this clause shall prevail.
- 15. Termination**
- 15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 6 months' written notice.
- 15.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 15.2.1 the other party 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), 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;
- 15.2.2 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 15.2.3 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 15.3 Without affecting any other right or remedy available to it, the Manufacturer may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 15.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 15.3.2 there is a change of Control of the Customer.
- 15.4 Without affecting any other right or remedy available to it, the Manufacturer may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Manufacturer if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.2.1 to clause 15.2.3, or the Manufacturer reasonably believes that the Customer is about to become subject to any of them.
- 16. Consequences of Termination**
- 16.1 On termination of the Contract:
- 16.1.1 the Customer shall immediately pay to the Manufacturer all of the Manufacturer's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied or ordered but for which no invoice has been submitted, the Manufacturer shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 16.1.2 Where there is a Service Contract in place the full outstanding amount for the remaining term of the Service Contract shall become payable.
- 16.1.3 the Customer shall return all of the Manufacturer Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Manufacturer may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of 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.
- 16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.
- 17. Force Majeure**
- 17.1 **Force Majeure Event** means any circumstance not within the Manufacturers reasonable control including, without limitation:
- 17.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 17.1.2 epidemic or pandemic;
- 17.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 17.1.4 nuclear, chemical or biological contamination or sonic boom;
- 17.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- 17.1.6 collapse of buildings, fire, explosion or accident; and
- 17.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- 17.1.8 non-performance by Manufacturers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- 17.1.9 interruption or failure of utility service.
- 17.2 Provided it has complied with clause 17.3, if the Manufacturer is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event, the Manufacturer shall not be in breach of this agreement 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.
- 17.3 The Manufacturer shall:
- 17.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 14 days from its start, notify the Customer in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- 17.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 17.4 If the Force Majeure Event prevents, hinders, or delays the Manufacturers performance of its obligations for a continuous period of more than 12 months, the Customer may terminate this agreement by giving 3 months written notice to the Manufacturer.

18. General

18.1 Assignment and Other Dealings

18.1.1 The Manufacturer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

18.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

18.2 Notices.

18.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

18.2.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);

18.2.2 Any notice or communication shall be deemed to have been received:

18.2.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

18.2.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

18.2.2.3 if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 18.2.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

18.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.2.4 A notice given under the Contract is not valid if sent by email.

18.3 **Severance**-If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 18.3 shall not affect the validity and enforceability of the rest of the Contract.

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

the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.5 **Third Party Rights**-Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. And 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.

18.6 **Entire Agreement**- 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

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

18.8 **Governing Law**-The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

18.9 **Jurisdiction**. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.