

Advanced Instruments Ltd. (United Kingdom) – General Terms and Conditions of Sale

Preamble

Supplier desires to provide to Customer, and Customer desires to purchase from Supplier, Goods for use in laboratory and clinical settings and/or Services. The Parties desire to set forth the terms and conditions that shall govern, as applicable, the payment, purchase and delivery of such Goods and Services. Accordingly, the Parties agree as follows:

The **Contract** consists of (a) these Terms and Conditions of Sale (the "**Conditions**"); (b) one or more Quotations prepared and issued by Supplier that have been accepted by Customer hereunder (each, a "**Quotation**") (c) Customer's **Order** accepting Supplier's Quotation, and (d) Supplier's **Order Acknowledgement**. In the event of a conflict between the provisions of these Terms and a Quotation, Order or Order Acknowledgement, the Terms shall prevail unless the Quotation or Order Acknowledgement (a) specifically references the conflicting provision in these Terms, including the applicable section number; and (b) explicitly states that it is intended to apply notwithstanding that conflicting provision in these Terms.

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

Definitions:

"Business Day"	a day other than a Saturday, Sunday or public holiday in England.
"Business Hours"	means the hours of 09.00 to 17.00 (United Kingdom time) inclusive on any Business Day.
"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 29.8.
"Consumables"	non-durable Goods used in the operation of the Equipment or Goods, including any such items so described in the Quotation.
"Contract"	As set forth in the preamble, above.
"Customer"	the person or firm who purchases the Goods or Services from the Supplier as identified in the Order.
"Delivery Location"	has the meaning given in clause 5.1.
"Excluded Causes"	means any of the following: (a) the use of the Equipment with equipment or materials not supplied or approved in writing by the Supplier or the manufacturer, including but not limited to any test cups, controls or calibrators;

(b) any maintenance, alteration, modification or adjustment performed by persons other than the Supplier or its employees or agents unless approved in writing by the Supplier;

(c) the Customer or third party moving the Equipment unless approved in writing by the Supplier;

(d) the use of the Equipment in breach of any of the provisions of the agreement under which the Equipment was supplied, or in breach of clause 18 of this Contract;

(e) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Equipment;

(f) a failure, fluctuation or malfunctioning of the air conditioning, humidity control or other environmental controls required for the normal operation of the Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer;

(g) the Customer's neglect or misuse of the Equipment;

(h) the Customer subjecting the Equipment to undue physical or electrical stress; or

(i) any other cause (except fair wear and tear), which is not due to the neglect or default of the Supplier.

"Equipment"

means the specific Goods which have been provided by the Supplier to the Customer under separate contract, and which are to be the subject of the Services, as referenced in the Quotation.

"Force Majeure Event"

has the meaning given to it in clause 27.

"Goods"

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

"Goods Specification"

any specification for the Goods, that is referenced in or attached to the Quotation.

"Good Working Order"	operating in accordance with the applicable specification of the manufacturer of the Equipment.
"Group"	in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.
"Incoterms"	means the ICC Incoterms 2020.
"Installation Date"	has the meaning given in clause 7.3.
"Intellectual Property Rights"	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.
"Medical Devices"	has the meaning set out in clause 5
"Medical Devices Regulation"	has the meaning set out in clause 5.1
"Location"	the location of the Equipment as set out in the Quotation and/or Order Acknowledgement, or any other location as may be agreed by the parties in writing from time to time.
"Order"	the Customer's order for the supply of Goods or, Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

"Order Acknowledgement"	has the meaning set out in clause 2.2.
"Quotation"	Seller's offer to sell Goods or Services.
"Services"	the services supplied by the Supplier to the Customer as set out in the Services Specification.
"Services Specification"	the description or specification of the Services provided by the Supplier to the Customer as set out in or referred to in the Quotation.
"Spare Parts"	all spare components and subassemblies of the Equipment supplied for installation in the Equipment as part of the provision of the Services.
"Start Date"	means the day immediately following expiry of the Warranty Period.
"Software"	has the meaning given in clause 10.1.
"Supplier"	Advanced Instruments Ltd. registered in England and Wales with company number 07284911, whose registered office is at Solent House, Johnson Road, Fernside Business Park, Wimborne, Dorset, UK, formerly known as Solentim Ltd.
"Term"	has the meaning set out in the Quotation and/or Order Acknowledgement.
"Third Party Goods"	means any Goods which are sold by the Supplier, but which are manufactured by a third party other than the Supplier and not being a member of the Supplier's group of companies, as identified in the Order Acknowledgment;
"Third Party Software"	has the meaning given in clause 10.1.
"Warranty Period"	has the meaning given in clause 8.1.

1.1. Interpretation:

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

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

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

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.

A reference to "writing" or "written" excludes fax and email.

2. **Basis of contract**

- 2.1. An Order constitutes an acceptance of the Supplier's Quotation by the Customer to purchase Goods or Services in accordance with these Conditions. 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. An Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order ("**Order Acknowledgement**") at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.3. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4. Any Quotation given by the Supplier constitutes an offer, which may be changed or withdrawn at any time before Customer issues an Order accepting the Quotation. The Quotation is valid for the length of time stated on the Quotation.
- 2.5. The Customer hereby consents to waive 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.
- 2.6. The Supplier's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Supplier in writing. In entering into the Contract, the Customer acknowledges that it does not rely on any such representations which are not so confirmed.

3. **Applicability of Conditions**

- 3.1. These Conditions are set out in parts, and are applicable as follows:-
 - 3.1.1. Part I – Goods (clauses 4 to 10 (inclusive) – are applicable to Contracts for the purchase of Goods;
 - 3.1.2. Part II – Services (clauses 11 to 8 (inclusive) – are applicable to Contracts for the purchase of Services;
 - 3.1.3. Part III – General Terms (clauses 19 to 9 (inclusive) – are applicable to all Contracts.

Part I – Goods

4. Goods

- 4.1. The Goods are described in the Goods Specification. The Supplier reserves the right to modify the design of the Goods without notice, provided that any such design modification does not materially alter the nature of the Goods being provided by the Supplier.
- 4.2. The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 4.3. If the Supplier shall cease to manufacture any Goods ordered by the Customer it shall give notice of the fact in writing to the Customer (but shall not be liable for any loss or damage occasioned thereby to the Customer) whereupon the Customer will have the option to be exercised within twenty-one days of the date of such notice, either to take equivalent goods (if available from the Supplier) or to cancel its order without further liability upon the Supplier or the Customer.
- 4.4. The Goods provided are the Supplier's standard goods, and the Customer, being a professional having the ability and the means to appreciate the scope of the Goods' features, acknowledges and agrees that it is responsible for ensuring the suitability and fitness for purpose of the Goods for its intended application, environment and use, and for ensuring that the Goods are capable of integration and interaction with any of its other equipment, software and facilities.
- 4.5. The Customer is responsible for ensuring that the Goods are used and operated in accordance with the Supplier's manual and instructions, that the Goods are handled in a suitable and safe manner and are applied and installed in accordance with the Supplier's application and installation instructions, and that all relevant safety information relating to the Goods is provided to all other users (including purchasers and users of other goods and equipment into which the Goods are incorporated).

5. Medical Devices

- 5.1. Some of the Goods the Seller may sell to the Customer may qualify as "Medical Devices" under applicable laws (the "**Medical Devices Regulation**") (such Goods being referred to as the "**Medical Devices**")
- 5.2. Within their respective spheres of control, the Seller and the Customer shall ensure that the requirements of product liability tort law, and regulations applicable to medical devices or any law or ordinance completing and/or repealing and replacing any of the aforementioned laws and ordinances, especially the Medical Devices Regulation, are complied with.
- 5.3. To help the Seller comply with its legal obligations, the Customer shall:
 - 5.3.1. ensure the traceability and safety of the Medical Devices manufactured by the Seller to the final user, using traceability forms or an equivalent system, which will ensure the traceability of said Medical Devices,
 - 5.3.2. maintain documents relating to traceability and storage conditions and make such documents available to the Seller for a minimum period of fifteen

years. These documents shall be made available to the Seller upon request, at any time and within a maximum of forty-eight hours,

- 5.3.3. ensure the storage and preservation of the Medical Devices manufactured by the Seller in conditions suitable for their preservation, as further specified in the relevant Product Specification. Starting from the Medical Devices' delivery, the Customer shall be always responsible for complying with all safety obligations prescribed by laws and regulations,
- 5.3.4. take part, if necessary, in any batch recall organized by the Seller and provide the Seller with all requested documents upon request at any time and within a maximum of forty-eight hours,
- 5.3.5. participate in the batch recall controls/audits regularly carried out by the Seller and follow the instructions that may be given from time to time.

6. **Delivery of Goods**

- 6.1. 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**") at any time after the Supplier notifies the Customer that the Goods are ready, and in accordance with the Incoterm or non-Incoterm shipping instructions specified in the Order Acknowledgement, and if no such term is specified, then shipment shall be at the expense of the Customer and the Customer shall bear risk of loss during shipment..
- 6.2. Delivery of the Goods shall be completed as specified in the relevant Incoterm or in accordance with article 6.1. hereinabove.
- 6.3. Any dates quoted for delivery of the Goods 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 that are relevant to the supply of the Goods.
- 6.4. 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.
- 6.5. 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.
- 6.6. Where the Goods are exported from the United Kingdom by the Customer following completion of delivery to the Customer within the United Kingdom, then the Customer will provide the Supplier with copies of all documentation and evidence as requested to demonstrate that the Products have been exported from the United Kingdom (including proof of export, customs declarations).

7. **Installation of Goods**

- 7.1. The Supplier will install the Goods at the Location, at a time and date to be agreed between the parties, by the attendance of an engineer.
- 7.2. The Customer shall not allow any person other than the Supplier's engineer to install the Goods or any part of them, and shall not use the Goods until installation is completed.
- 7.3. Installation is completed on the date when the Supplier's engineer issues documentation indicating that the Goods are installed and functioning in accordance with the Goods Specification, such date being the ("**Installation Date**").
- 7.4. The Customer shall ensure that the Customer's engineer has full and free access to the Location and to the Goods and shall provide them with adequate and safe working space and facilities as are reasonably required to enable the Supplier to complete installation.
- 7.5. The Customer shall provide, for free use by the Supplier, as and when it may require, all necessary services and facilities for installation, including without limitation to the generality of the foregoing access to appliances, power and water.
- 7.6. If, through no fault of the Supplier, installation cannot be completed on the engineer's attendance at the Location, then the Supplier reserves the right to withdraw its installation staff and to make a charge for travelling time and expenses if it is called upon by the Customer at a subsequent date to return to the site to attend or carry out installation.
- 7.7. The Supplier warrants and agrees that:
 - 7.7.1. it shall install the Goods at the Location;
 - 7.7.2. it shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Location, and that have been communicated to it provided that it shall not be liable under this Contract if, as a result of such observation, it is in breach of any of its obligations under this Contract.
- 7.8. The Supplier shall be responsible for the installation of the Goods by their connection to utilities, but the provision of utilities and connection points will be undertaken by the Customer or the customer's other third party contractors.

8. **Quality of Goods**

- 8.1. Subject to clause 8.6, the Supplier warrants that:

For non-Consumable Goods, for a period of 12 months from the Installation Date;

For Consumable Goods, in the event no expiration date is stated on the packaging, for a period of 12 months from delivery to Customer;

Or, for Consumable Goods, if an expiration date is stated on the packaging, until the expiration stated on the Consumable packaging ("**Warranty Period**"),

The Goods shall:

- 8.1.1. conform in all material respects with the Goods Specification; and
- 8.1.2. be free from material defects in design, material and workmanship.
- 8.2. Subject to clause 8.3, if:
 - 8.2.1. the Customer gives notice in writing to the Supplier 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 Supplier is given a reasonable opportunity of examining such Goods; and
 - 8.2.3. the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 8.3. The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 8.1 if:
 - 8.3.1. the Customer makes any further use of such Goods after giving a notice in accordance with clause 8.2;
 - 8.3.2. the defect arises due to the Customer's failure to comply with the provisions of clause 4.4, 4.5 or 10.3;
 - 8.3.3. the defect arises because the Customer failed to follow the Supplier'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 regarding the same;
 - 8.3.4. the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 8.3.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 8.3.6. the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 8.4. Except as provided in this clause 8, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 8.1.
- 8.5. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 8.6. The warranties in this clause 8 do not apply to Third Party Goods and Third Party Software, in respect of which the Supplier shall pass on to the Customer the benefit of any warranty given by the manufacturer of those Third Party Goods or Third Party Software, to the extent that it is able to do so.
- 8.7. The terms implied by sections 13 to 15 of the Sale of Products Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

8.8. Where the Customer is exporting the Products outside of United Kingdom, it shall be responsible for compliance with all applicable laws and regulations regarding product compliance, including registration, certification, and control of medical products and hazardous substances as applicable. Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Contract (or any products, including software, incorporating such data), in breach of any applicable laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

9. **Title and risk**

9.1. The risk in the Goods shall pass to the Customer in accordance with applicable INCOTERMS and in the absence of any INCOTERMS, upon their dispatch from the Seller's warehouse.

9.2. Title to the Goods shall not pass to the Customer until 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.

9.3. Until title to the Goods has passed to the Customer, the Customer shall:

9.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

9.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

9.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

9.3.4. notify the Supplier immediately if it becomes subject to any of the events listed in clause 25.1.2 to clause 25.1.3; and

9.3.5. give the Supplier such information as the Supplier may reasonably require from time to time relating to:

9.3.5.1. the Goods; and

9.3.5.2. the ongoing financial position of the Customer.

9.4. At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession and if the Customer fails to do so promptly, resort to all means permitted by law to recover the Goods on any premises of the Customer or of any third party where said Goods are stored.

10. **Software and Third-Party Software**

10.1. In the event the Goods include any embedded computer software developed by the Supplier (the "**Software**") which is not covered by a separate license, until Supplier receives payment in full from the Customer, the Customer and any users authorised by the Customer are hereby granted a temporary non-exclusive, non-transferable fully paid-up right and license to use the Software only in connection with the Customer's

use of the Goods supplied by Supplier and to make a single copy of the Software for back-up purposes. The temporary license shall become a perpetual license upon Supplier's receipt of payment in full from Customer and shall otherwise expire in the event Customer fails to fully meet its contractual payment obligations. The term "Software" does not include any software developed by a third party ("**Third Party Software**"), which is instead covered by such licence as may be provided by the original software developer. In respect of such Third Party Software, the Customer subscribes directly with the third party software provider for that Third Party Software, and the Customer is responsible for ensuring it accepts any third party terms for use of that Third Party Software. The Supplier accepts no responsibility or liability for the Third Party Software, and where there is any failure in the Equipment caused by the Third Party Software, the Customer's sole recourse is to the relevant third party provider.

- 10.2. The Software is supplied only in machine-readable object code form and is proprietary confidential information of the Supplier. No rights are granted under this Contract or otherwise to disassemble, decompile, produce humanly readable copies of, reverse engineer, modify or create any derivative works based upon the Software or in any manner to attempt to derive source code from the Software or the Goods (including chipsets and ROM therein). The foregoing licence will automatically terminate in the event that the Customer attempts to use the Software in any manner that is contrary to this clause 10.
- 10.3. Where the Third Party Software provider issues a new release or update to the Third Party Software, the Customer shall be required to accept all further terms of use for such releases and updates, and to ensure that the Third Party Software within the Goods is at all times the latest release and update as issued by the third party provider. In the event that the Customer does not ensure that all latest releases and updates are installed within the Goods, then the Supplier shall be entitled to terminate the Contract with immediate effect, and all Goods warranties shall cease to have effect.
- 10.4. Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Contract (or any products, including software, incorporating such data), in breach of any applicable Export Control Laws, including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 10.5. The Customer shall not sell, license, sublicense, rent, lease or otherwise transfer or assign the Software or Third Party Software to any third party.

Part II – Services

11. Term of Service Contract

- 11.1. The Contract shall commence on the Commencement Date, and unless terminated earlier in accordance with its terms shall continue for the Term.
- 11.2. The Supplier will commence the provision of the Services on the Start Date, and the Services shall be provided for the Term.
- 11.3. The Contract shall terminate automatically on expiry of the Term.

12. **Customer obligation to maintain**

- 12.1. The Customer warrants that the Equipment shall be kept in Good Working Order prior to the Start Date and will be in Good Working Order at all times prior to the first service visit undertaken by the Supplier.
- 12.2. In the event that the Supplier finds the Equipment not to be in Good Working Order on its first service visit, the Supplier shall be entitled to charge the Customer, in addition to any service charges, all costs incurred in restoring the Equipment to Good Working Order.

13. **Supply of Services**

- 13.1. The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 13.2. The Supplier shall use reasonable endeavours to meet any performance dates specified in the Quotation and/or Order Acknowledgement but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. In particular, the Customer acknowledges that the dates for performance are subject to the Supplier's personnel being able to travel to the Location which may be affected by Force Majeure Events such as illness, travel restrictions, etc.
- 13.3. The Supplier 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 Supplier shall notify the Customer in any such event.
- 13.4. The Supplier warrants to the Customer that:
- 13.4.1. the Services will be provided using reasonable care and skill; and
- 13.4.2. all Spare Parts, Consumables and equipment supplied or used in the course of the provision of the Services shall operate materially in accordance with their technical specifications.
- 13.5. The Supplier shall procure that its representatives shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these have been brought to the attention of its representatives.

14. **Routine Maintenance**

- 14.1. Where routine maintenance services are being supplied, a representative of the Supplier shall attend the Location at such frequency as set out in the Service Specification. The Supplier's representative shall perform routine maintenance during Business Hours at such times as may be agreed in advance between the Customer and the Supplier from time to time.
- 14.2. If the Supplier's representative discovers that the Equipment is defective or is malfunctioning or has failed or is not otherwise in Good Working Order during the course of the routine maintenance the representative will use reasonable endeavours to repair it during that visit at the Location. If that is not reasonably practicable (or it is not reasonably practicable to do so during Business Hours) the Supplier's representative shall either arrange for a further visit to the Location within Business

Hours to complete the repair, or remove or arrange for the removal of the Equipment (or part of the Equipment, if applicable) for repair off-site.

15. **Corrective Maintenance**

- 15.1. The Customer shall report that the Equipment is defective or malfunctioning or has failed or is otherwise not in Good Working Order either in writing, by email, or by telephone, or in such manner as the Supplier may reasonably require from time to time.
- 15.2. On the Customer informing the Supplier that the Equipment is defective or is malfunctioning or has failed or is not otherwise in Good Working Order, the Supplier shall use reasonable endeavours to ensure that one of its representatives shall respond promptly, during Business Hours, by telephone, email or in writing.
- 15.3. The Supplier shall not be liable for any delay in providing the relevant Services if in the Supplier's reasonable opinion it needs to remove the Equipment (or part of the Equipment, if applicable) for repair off-site and the Customer unreasonably refuses this request.

16. **Excluded Maintenance**

- 16.1. The Supplier is not obliged to perform any Services where the defect or malfunctioning or failure results from or is caused by any of the Excluded Causes.
- 16.2. Where the Supplier is performing or has performed the Services in circumstances where it is established that the Equipment was not in Good Working Order due to any of the Excluded Causes, the Supplier may charge [on a time and materials basis] in respect of that work.
- 16.3. If on investigation the Supplier reasonably determines that any defect in or malfunctioning of the Equipment is the result of an Excluded Cause, the Customer shall pay additional charges in respect of the time incurred by the Supplier in making the investigation and determining the cause of the defect in or malfunctioning of the Equipment.

17. **Spare Parts and Consumables**

- 17.1. The Supplier shall, where forming part of the Service Specification, supply and fit Spare Parts and Consumables as required to maintain the Equipment in Good Working Order or to restore the Equipment to Good Working Order.
- 17.2. Where Spare Parts and Consumables are not included as part of the Service Specification then the Supplier will supply and fit Spare Parts and Consumables at the Customer's cost, and all associated charges for those Spare Parts and Consumables will be invoiced to the Customer.
- 17.3. All Spare Parts shall be either new, or reconditioned or reassembled Spare Parts which are equivalent to new Spare Parts in performance. All Consumables shall be new. The Supplier will transfer to the Customer, with full title guarantee and free from all third party rights, all the Spare Parts and Consumables that it provides to the Customer, and the Spare Parts and Consumables shall become part of the Equipment upon their installation in the Equipment.

18. **Customer obligations regarding Equipment**

18.1. The Customer shall at all times:

- 18.1.1. keep the Equipment in the environmental conditions recommended by the manufacturer of the Equipment;
- 18.1.2. use the Equipment only in accordance with the instructions and recommendations of the manufacturer of the Equipment or as may be issued in writing by the Supplier;
- 18.1.3. not allow any other person than the Supplier's representatives, or the Customer's representatives working under the Supplier's specific instructions, to adjust, maintain, repair, replace or remove the Equipment or any part of it;
- 18.1.4. not move the Equipment from the Location without the prior written consent of the Supplier;
- 18.1.5. permit only trained and competent personnel to use the Equipment;
- 18.1.6. notify the Supplier promptly if the Equipment is discovered to be defective or malfunctioning or has failed or is otherwise not in Good Working Order;

18.2. The Customer shall ensure that the Supplier's representatives have full and free access to the Location and to the Equipment and to any records of its use kept by the Customer, and shall provide them with adequate and safe working space and facilities as are reasonably required to enable the Supplier to perform its obligations under this Contract.

18.3. The Customer shall provide the Supplier with such information concerning the Equipment, its application, use, location and environment as the Supplier may reasonably request to enable it to perform its obligations under this Contract. If the Customer fails to disclose information relevant to solving a technical problem and a return visit is deemed necessary, the Customer may (at the Contractor's sole discretion) be liable for such additional costs.

18.4. The Customer shall take all such steps as may be necessary to ensure the safety of any of the Supplier's representatives when attending the Location.

18.5. If the Supplier's performance of its obligations under this Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

Part III – General Terms

19. **Charges**

19.1. The price for Goods:

- 19.1.1. shall be the price set out in the Quotation, or, if no price is quoted, the price set out in the Supplier's published price list as at the date of placing the order; and

- 19.1.2. shall be exclusive of all costs and charges of packaging, loading, unloading, insurance, taxes, duties, levies, tariffs, and transport of the Goods, which shall be invoiced to the Customer.
- 19.2. The Supplier reserves the right to:
- 19.2.1. 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 Supplier that is due to:
- 19.2.1.1. any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 19.2.1.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- 19.2.1.3. any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 19.3. The charges for the Services shall be calculated in accordance with the Order Acknowledgement.

20. **Payment terms**

- 20.1. The Supplier shall invoice the Customer on completion of the Services to which the charges relate.
- 20.2. Unless otherwise stated in the applicable Quotation, in respect of Goods, the Supplier shall be entitled to invoice 50% of the price at any time following its issue of the Order Acknowledgement, and the remaining 50% of the price on or at any time after completion of delivery. Each such invoice is payable by the Customer immediately on receipt and time for payment shall be of the essence of the Contract.
- 20.3. 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 Supplier to the Customer, the Customer shall pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 20.4. 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 25, 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 20.4 will accrue each day on the basis of 4 times the Bank of England's base rate increased by 10 percentage points.
- 20.5. If the Customer fails to make a payment due to the Supplier under the Contract by the due date, the Supplier shall also be eligible to receive a global compensation for collection costs from the Customer amounting to 40 Pounds Sterling. Should the

collection costs be greater than the aforementioned global compensation, the Supplier may request additional compensation from the Customer, upon provision of written justifications of such costs by the Supplier.

20.6. 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).

21. **Intellectual property rights**

21.1. All Intellectual Property Rights in or arising out of or in connection with the Goods and the Services shall be owned by the Supplier, or in the case of Third Party Goods and Third Party Software by the relevant third party owner.

21.2. The Supplier shall defend, hold harmless and indemnify the Customer and its officers, directors, employees, and agents (the "Customer Indemnitees") in respect of any claims, demands, costs, damages, settlements and liabilities (including reasonable attorney's fees and court costs), which may arise out of or result from any third party claim alleging that the Goods, Services or Software infringe the Intellectual Property Rights of any third party; provided, however, that this indemnification is conditioned upon: (i) where the claim relates to Third Party Goods or Third Party Software, the Supplier being indemnified from the relevant third party manufacturer; (ii) the Customer providing the Supplier with prompt written notice of any such claim; (iii) the Supplier having sole control and authority with respect to the defence or settlement of any such claim; and (iv) the Customer cooperating fully with the Supplier, at the Supplier's sole cost and expense, in the defence of any such claim. The Customer may participate in the defence of any claim through its own counsel, and at its own expense. Notwithstanding the foregoing, the Supplier shall not be obligated to indemnify the Customer Indemnitees for third party claims that arise from: (i) any combination of Goods, Services or Software with goods or software not supplied by the Supplier, where such infringement would not have occurred but for such combination; (ii) the adaptation or modification of the Goods, Services or Software by the Customer, where such infringement would not have occurred but for such adaptation or modification; (iii) the use of the Goods or Services in any manner not contemplated under this Contract or the use of the Software in any manner not permitted under this Contract; or (iv) a claim based on Intellectual Property Rights owned by the Customer or any of its affiliates.

21.3. In the event that any Goods, Services or Software are held in a suit or proceeding to infringe any Intellectual Property Rights of a third party and the use of such Goods, Services or Software are enjoined, or the Supplier reasonably believes that such Goods, Services or Software are likely to be found to infringe, or likely to be enjoined, the Supplier may, at its sole cost and expense, and at its option, either (i) procure for the Customer the right to continue using the applicable Goods, Services and/or Software, (ii) modify such Goods, Services and/or Software so that they become non-infringing or no longer constitute a misappropriation, without affecting the basic functionality of such Goods, Services or Software, provided, however, that if (i) and (ii) are not practicable, the Supplier shall have the right, at its sole discretion, to repurchase the Goods, Services or Software which the Customer purchased from the Supplier and which are unaltered and in saleable condition, at the price the Customer paid the Supplier for such Goods, Services and/or Software.

22. **Customer Default**

- 22.1. If the Supplier'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 under the Contract other than a Force Majeure Event ("**Customer Default**"):
- 22.1.1. without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to cancel any uncompleted order for Goods and/or suspend further delivery of Goods 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 Supplier's performance of any of its obligations;
 - 22.1.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations; and
 - 22.1.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

23. **Confidentiality**

- 23.1. 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 23.2.
- 23.2. Each party may disclose the other party's confidential information: (i) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 23; and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 23.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

24. **Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 24.1. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 24.2. The restrictions on liability in this clause 24 apply to every liability arising under or in connection with the Contract including liability in contract, misrepresentation, restitution or otherwise.
- 24.3. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- 24.3.1. death or personal injury;
 - 24.3.2. fraud or fraudulent misrepresentation;
 - 24.3.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); and
 - 24.3.4. defective products under the Consumer Protection Act 1987.
- 24.4. The Supplier's total liability to the Customer shall not exceed:
- 24.4.1. in the case of a Contract for Goods, the total charges, being all sums paid by the Customer under the Contract for the provision of those Goods; and
 - 24.4.2. in the case of a Contract for Services, the Supplier's liability shall not exceed an amount equal to the value of the Equipment which is subject to the Services.
- 24.5. This clause 24.5 sets out specific heads of excluded loss and exceptions from them:
- 24.5.1. Subject to clause 24.3, the following types of loss are wholly excluded:
 - 24.5.1.1. loss of profits;
 - 24.5.1.2. loss of sales or business;
 - 24.5.1.3. loss of agreements or contracts;
 - 24.5.1.4. loss of anticipated savings;
 - 24.5.1.5. loss of use or corruption of software, data or information;
 - 24.5.1.6. loss of or damage to goodwill; and
 - 24.5.1.7. indirect or consequential loss.
- 24.6. The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications. 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.
- 24.7. This clause 24 shall survive termination of the Contract.
- 24.8. In respect of a contract for Services, the Customer shall indemnify, defend, save and hold harmless the Supplier and its officers, directors, employees, affiliates and agents (each a "Seller Indemnitee") from and against any and all damages directly or indirectly asserted against, imposed upon, resulting to, or incurred or required to be paid by any Seller Indemnitee from or in connection with, (a) any breach or inaccuracy of any representation or warranty made by the Customer in the Contract, (b) a breach or non-performance of any covenant or agreement made by the Customer in or in connection with this Contract or in any other agreements to which the Customer is or is to become a party, or (c) any misuse or negligent use of the Equipment or any Equipment parts or by-products of the Equipment by the Customer.

25. **Termination**

- 25.1. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the other party if:
- 25.1.1. the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 10 days after receipt of notice in writing to do so;
 - 25.1.2. 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;
 - 25.1.3. the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 25.1.4. 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.
- 25.2. Without affecting any other right or remedy available to it, 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
- 25.3. In respect of a contract for Goods, without affecting any other right or remedy available to it, the Supplier may suspend further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier 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 25.1.2 to clause 25.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 25.4. Without affecting any other right or remedy available to it, the Supplier may terminate a Contract for Services with immediate effect by giving written notice to the Customer if the Supplier reasonably determines that the Equipment can no longer be maintained in Good Working Order by the provision of Spare Parts or Consumables or the Equipment is damaged beyond economic repair otherwise than through the Supplier's fault.
- 25.5. Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:
- 25.5.1. the Customer fails to pay any amount due under the Contract on the due date for payment;
 - 25.5.2. the Customer becomes subject to any of the events listed in clause 25.1.2 to clause 25.1.4 or the Supplier reasonably believes that the Customer is about to become subject to any of them.

26. **Consequences of termination**

26.1. On termination of the Contract:

26.1.1. 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;

26.1.2. the Customer shall return all Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may resort to all means permitted by law to recover the Goods. 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.

26.2. Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

26.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

27. **Force majeure**

The Supplier shall not be in breach of the Contract nor liable for any delay in performing or failure to perform any of its obligations under the Contract if such delay or failure result, directly or indirectly, from *force majeure* events (a "**Force Majeure Event**"). In such circumstances 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.

Should a Force Majeure Event occur and last for more than two (2) months, either Party may request the termination of this Agreement by formal notice (*lettre de mise en demeure*) sent to the other Party without giving rise to any grounds for indemnification whatsoever.

28. **Non-solicitation**

28.1. In order to protect their respective legitimate business interests each party covenants with the other for itself and as agent for each member of its Group that it shall not (and shall procure that no member of its Group shall) (except with the prior written consent of the other party):

28.1.1. attempt to solicit or entice away; or

28.1.2. solicit or entice away,

from the employment or service of the other party or any member of its Group the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other party or any member of its Group.

28.2. The parties shall be bound by the covenant set out in clause 28.1 during the Term, and for a period of 12 months after termination or expiry of this Contract.

28.3. For the purposes of this clause 28, a "Restricted Person" shall mean any firm, company or person employed or engaged by a party or any member of its Group during the Term who has been engaged in the provision of the Services or the management of this Contract.

28.4. Any consent given in accordance with clause 28.1 shall be subject to payment to the consenting party of a sum equivalent to 20% of the then current annual remuneration of the Restricted Person or, if higher, 20% of the annual remuneration to be paid to the Restricted Person.

29. **General**

29.1. **Assignment and other dealings.** The Supplier 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. 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.

29.2. **Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and shall be 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). Any notice shall be deemed to have been received: (i) if delivered by hand, at the time the notice is left at the proper address; (ii) 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. 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. A notice given under the Contract is not valid if sent by email or fax.

29.3. **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 or part provision of the Contract is deemed deleted under this clause 29.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

29.4. **Waiver.** 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.

29.5. **No partnership or agency.** 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.

29.6. **Entire agreement.** The 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. Each party acknowledges that in entering into the Contract it does not rely on, and 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 misrepresentation based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

- 29.7. **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 29.8. **Third party rights.** 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. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 29.9. **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 laws of England.
- 29.10. **Jurisdiction.** Each party irrevocably agrees that the Courts of England 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.