

Monmouth Scientific Limited Terms & Conditions of Sale

1. INTERPRETATION

1.1 In these conditions:-

“Buyer” means the person who purchases the Goods and/or Services from the Seller.

“Conditions” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller.

“Contract” means the contract for sale of the Goods and/or Services, the terms of which are set out in these Conditions.

“Environmental Law” means any laws, statutes, regulations, subordinate legislation, bye-laws, common law and other national, international, European Union, state and local laws, rules, codes of practice, guidance notes, duties, from time to time applicable to the Seller and/or the Buyer, that relate or apply to any of the following matters: (a) manufacture, generation, deposit, disposal or arranging for disposal, keeping, storage, possession, supply, treatment, emission, release, discharge, leaching, transportation, spillage, leakage, migration, escape, entry, recovery, recycling, exposure to, transmission, handling, use or presence of any hazardous substance or waste that causes or may cause harm or damage to the environment (including producer responsibility requirements); (b) nuisance; or (c) pollution, contamination, conservation or protection of the environment.

“Goods” means the goods (including any instalment of the goods or any parts for them), set out in the Order.

“Goods Specification” means any specification for the Goods, including any relevant plans or drawings, that is agreed in Writing by the Buyer and the Seller.

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

“Order” means the Buyer’s order for the supply of Goods and/or Services, as set out in the Buyer’s written acceptance of the Seller’s quotation or the Buyer’s written order, as the case may be.

“Premises” means the premises at which the Seller is performing the Services.

“Seller” means Monmouth Scientific Limited, also trading as Monmouth Scientific, registered in England and Wales with Company Reg. No. 04716008.

“Services” means the services, supplied by the Seller to the Buyer as set out in the Service Specification.

“Service Specification” means the description or specification for the Services provided in Writing by the Seller to the Buyer.

“Writing” includes, e-mail but not fax.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

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

2. **BASIS OF THE CONTRACT**

2.1 The Order constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Seller issues written acceptance of the Order, at which point and on which date the Contract shall come into existence.

2.3 Any samples, drawings or advertising issued by the Seller and any illustrations or descriptions of the Services or prices of the Goods or Services contained in the Seller’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 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 No variation to these Conditions shall be binding unless agreed in Writing and signed between the authorised representative of the Buyer and a Director of the Seller.

2.6 The Seller’s employees or agents are not authorised to make any representation concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, which are not so confirmed.

2.7 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer’s own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.8 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. **ORDERS & SPECIFICATIONS**

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable Goods Specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.2 The Goods are described in the Seller's catalogue or website (as applicable), as modified by any applicable Goods Specification.

3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a Goods Specification, the Buyer shall indemnify the Seller against all liabilities, damages, costs, expenses and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Seller arising out of or in connection with any claim made against the Seller for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Seller's use of the Goods Specification. This clause 3.3 shall survive termination of the Contract.

3.4 The Seller reserves the right to make any changes to the Goods Specification which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

4. **PRICE OF THE GOODS**

4.1 The price of the Goods shall be the price set out in the Order or, where no price has been quoted, the price listed in the Seller's published price list current at the date of acceptance of the Order.

4.2 Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply and the Buyer shall be responsible for:

4.2.1 obtaining, at its own cost, such export and import licences and other consents and customs clearance in relation to the Goods as are required from time to time and, if required by the Seller, the Buyer shall make those licences and consents available to the Seller prior to the relevant shipment;

4.2.2 payment of any export and import duties and taxes in relation to the Goods; and

- 4.2.3 compliance with all applicable laws and regulations of the country for which the Goods are destined. The Seller shall have no liability for any breach by the Buyer of any such laws.
- 4.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost of the Goods to the Seller which is due (a) to any factor beyond the control of the Seller (such as, without limitation, any foreign fluctuation, currency regulation, alteration of duties, significant increase in costs of labour, unforeseen costs within site surveys and/or installations, materials or other costs of manufacture), (b) any change in delivery date, quantities or Goods Specification which is requested by the Buyer, or (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions in respect of the Goods.
- 4.4 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, or unless otherwise agreed in Writing between the Buyer and the Seller, all prices given by the Seller are exclusive of all costs and charges of packaging, insurance and transport of the Goods, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance except for the Seller's standard packaging.
- 4.5 All amounts payable by the Buyer under the Contract are exclusive of any applicable value added tax chargeable from time to time ("**VAT**") and the cost of any certificate of conformity supplied, which the Buyer shall be additionally liable to pay the Seller. Where any taxable supply for VAT purposes is made under the Contract by the Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.
- 4.6 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the payment due date.
- 4.7 The price for the Services shall be the price set out in the Order.
- 4.8 In addition, the Seller shall be entitled to charge the Buyer for any:
- 4.8.1 parking fees or charges reasonably incurred by the Seller during the provision of the Services in circumstances where the Buyer has not provided complimentary parking at the site at which the Services are to be performed; and
- 4.8.2 parking penalties or fines incurred by the Seller during the provision of the Services, where such penalties or fines result from the Seller parking in a location expressly directed or designated by the Buyer.

5. **TERMS OF PAYMENT**

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 In respect of Services, the Seller shall invoice the Buyer on completion of the Services.
- 5.3 The Buyer shall pay each invoice submitted by the Seller within 30 days of the date of the Seller's invoice, (notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer) and in full and in cleared funds to a bank account nominated in Writing by the Seller. The time of payment shall be of the essence of the Contract. Receipts for payment will only be issued upon request.
- 5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to charge the Buyer interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.4 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%.

6. **DELIVERY**

- 6.1 The Buyer shall collect the Goods from the Seller's premises or such other location (for example the broker's premises) as may be agreed with the Buyer before delivery ("**Delivery Location**") within six weeks of the Seller notifying the Buyer that the Goods are ready.
- 6.2 Delivery of the Goods shall be completed on the completion of loading of the Goods at the Delivery Location.
- 6.3 The Buyer shall immediately inform the Seller if, on attending the Delivery Location, it has not received the Goods.
- 6.4 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods that is caused by a force majeure event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. Time for delivery shall not be of the essence unless previously agreed in Writing by the Seller. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.5 The Seller reserves the right to deliver Orders in part or in whole. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

- 6.6 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.7 If the Buyer fails to take delivery of the Goods within six weeks of the Seller notifying the Buyer that the Goods are ready for delivery, or fails to give the Seller adequate delivery instructions at the time stated for delivery (in each case otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third working day following the day on which the Seller notified the Buyer that the Goods were ready and without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.7.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.7.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price of the Goods under the Contract.

7. **RISK & TITLE**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer on completion of delivery (or for the avoidance of doubt deemed delivery under clause 6.7).
- 7.2 Title to the Goods shall not pass to the Buyer until the earlier of:
- 7.2.1 the Seller has received payment in full (in cash or cleared funds) for the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due; and
 - 7.2.2 the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 7.4.2.
- 7.3 Until title in the Goods passes to the Buyer, the Buyer shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured against all risks for their full price and identified as the Seller's property.
- 7.4 Subject to clause 7.5, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:
- 7.4.1 it does so as principal and not as the Seller's agent;
 - 7.4.2 title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs; and,

- 7.4.3 the Buyer shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.5 Until title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been re-sold), the Seller shall be entitled at any time to:
- 7.5.1 by notice in Writing, terminate the Buyer's right under clause 7.4 to resell the Goods or use them in the ordinary course of its business; and
- 7.5.2 require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so promptly, to enter upon any premises of the Buyer or any third party where the Goods are stored in order to recover the Goods.
- 7.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so, all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) immediately become payable.

8. **WARRANTY FOR GOODS**

- 8.1 The Seller warrants that on delivery, and for a period of five years from the date of delivery (or such longer period agreed between the parties in Writing) ("**Warranty Period**"), the Goods shall:
- 8.1.1 conform in all material respects with their description or, if applicable, with the Goods Specification;
- 8.1.2 be free from material defects in design, material and workmanship; and
- 8.1.3 be fit for any purpose held out by the Seller.
- 8.2 Subject to clause 8.3, if:
- 8.2.1 the Buyer gives notice in Writing to the Seller during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 8.1;
- 8.2.2 the Seller is given a reasonable opportunity of examining such Goods; and
- 8.2.3 the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost,
- the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 8.3 The Seller shall not be liable for the Goods' failure to comply with the warranty set out

in clause 8.1 if:

- 8.3.1 the Buyer makes any further use of such Goods after giving a notice in accordance with clause 8.2;
- 8.3.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 8.3.3 the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer;
- 8.3.4 the Buyer alters or repairs such Goods without the written consent of the Seller;
- 8.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 8.3.6 the Goods differ from their description or, if applicable, the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

8.4 The warranty in clause 8.1 does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.5 In the event that the Buyer requests warranty service for a part that is believed to be defective, and the Seller advises the Buyer, either verbally or in Writing, to perform preliminary troubleshooting steps (such as changing filters or similar actions) before requesting an engineer's visit, the Buyer acknowledges that failure to follow such advice may result in unnecessary service visits. In such cases, if an engineer is dispatched and the issue is found to be unrelated to a defect, the Buyer shall be liable for the full cost of the engineer's visit, including any applicable charges for parts and services, as determined by the Seller's standard rates.

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

9. LIMITATION OF LIABILITY

9.1 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

9.2 Nothing in these Conditions shall limit or exclude any liability for:

- 9.2.1 death or personal injury caused by negligence;

- 9.2.2 fraud or fraudulent misrepresentation;
 - 9.2.3 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);
 - 9.2.4 defective products under the Consumer Protection Act 1987; or
 - 9.2.5 any liability that legally cannot be limited.
- 9.3 Subject to clause 9.2, the Seller shall not be liable to the Buyer for any:
- 9.3.1 loss of profits;
 - 9.3.2 loss of anticipated savings;
 - 9.3.3 loss of sales or business;
 - 9.3.4 loss of agreements or contracts; or
 - 9.3.5 any indirect or consequential loss
- in each case arising under or in connection with the Contract; and
- 9.4 Subject to clause 9.2, the Seller's total liability to the Buyer shall not exceed 100 per cent of the price of the Goods and Services ordered under the Contract.
- 9.5 The Seller has given commitments as to compliance of the Goods and Services with relevant specifications in clause 8 and clause 14. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.6 While the Seller will on request endeavour to provide technical advice and assistance concerning the Goods, all such technical advice or assistance is given gratis and the Seller assumes no obligation or liability for advice or assistance given.
- 9.7 No express or implied warranty is given by the Seller in respect of the service life of the Goods supplied nor that they are suitable for a particular purpose or for use under any specific conditions notwithstanding that such purpose or conditions may be known or made known to the Seller.
- 9.8 This clause 9 shall survive termination of the Contract.
10. **LIABILITY FOR POLLUTION & CONTAMINATION**
- 10.1 The Buyer shall:
- 10.1.1 use the Goods in accordance with any instructions for use provided by the Seller; and

- 10.1.2 comply with all Environmental Law in respect of its use, maintenance and disposal of the Goods.
- 10.2 The Buyer shall indemnify the Seller against all liabilities, damages, costs, expenses and losses (including, but not limited to, fines and penalties to the extent permitted by law, clean-up or other remedial or containment costs, any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Seller as a result of (a) any claim by a third party or (b) any action (including any investigation) by a regulatory authority or governmental authority, in either case arising out of or in connection with:
- 10.2.1 any breach of clause 10.1 by the Buyer; or
- 10.2.2 the Buyer's failure to comply with Environmental Law in respect of its use of the Goods.
- 11. CANCELLATION AND RETURN OF GOODS**
- 11.1 In respect of Goods, Orders accepted by the Seller shall not be cancelled except with the Seller's consent in Writing and any cancellation will be subject to a cancellation charge 20% of the Order value.
- 11.2 Where the Goods have been delivered to the Buyer and the Buyer wishes to return any unwanted or incorrectly ordered Goods, such Goods must not be returned except with the Seller's consent in Writing.
- 11.3 Where the Seller consents to the return of unwanted or incorrectly ordered Goods, the Buyer must return the Goods to the Seller without undue delay and in any event not later than 30 days after delivery.
- 11.4 To qualify for a refund, all Goods returned must be in 'as new' condition in the manufacturer's original packaging, unsoiled and undamaged.
- 11.5 The following Goods cannot be returned and do not qualify for any refund:
- 11.5.1 all filters including carbon, HEPA and pre-filters (for hygiene and safety reasons, returns of filters, including carbon, HEPA and pre-filters will not be accepted under any circumstances); and
- 11.5.2 any Goods where the original packaging is not provided, or any shrink-wrap packaging or seals are broken or unsealed.
- 11.6 Subject to compliance with clauses 11.2 to 11.5 inclusive (as determined by the Seller), the Seller shall refund the Buyer for the price of the relevant Goods less the following deductions; (a) a restocking charge of 20% of the original invoice value of the returned Goods and (b) the total carriage / shipping cost of the returned Goods.
- 11.7 All the costs referred to in this clause are exclusive of VAT.

12. **TERMINATION**

12.1 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:

12.1.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in Writing to do so;

12.1.2 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), 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;

12.1.3 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

12.1.4 the other party'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.

12.2 Without affecting any other right or remedy available to it, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

12.3 Without affecting any other right or remedy available to it, the Seller may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer fails to pay any amount due under the Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4, or the Seller reasonably believes that the Buyer is about to become subject to any of them.

13. **CONSEQUENCES OF TERMINATION**

13.1 On termination of the Contract:

13.1.1 the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;

13.1.2 the Buyer shall return any Goods which have not been fully paid for. If the Buyer fails to do so, then the Seller may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall

be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

13.2 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.

13.3 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.

14. **SERVICES**

14.1 The Seller shall supply the Services to the Buyer in accordance with the Service Specification in all material respects.

14.2 The Seller shall use all reasonable endeavours to meet any performance dates for the Services but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

14.3 The Seller 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 Seller shall notify the Buyer in any such event.

14.4 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.

14.5 The Buyer shall:

14.5.1 ensure that the terms of the Order and any information it provides in the Service Specification are complete and accurate;

14.5.2 co-operate with the Seller in all matters relating to the Services;

14.5.3 prepare the Premises for the supply of the Services including ensuring that the Premises and that the plant and equipment thereon, are in a fit condition for the safe carrying out of the Services;

14.5.4 provide the Seller, its employees, agents, consultants and subcontractors, with access to the Premises and other facilities as reasonably required by the Seller to provide the Services, including clear uninterrupted access to the Premises during normal working hours;

14.5.5 if a permit to work system is in use at the Premises, the Buyer shall ensure correct issue to the Seller, its employees, agents, consultants and subcontractors. All permits and associated site access paperwork MUST be provided in advance or at the time of arrival to the Premises;

- 14.5.6 provide the Seller with any access equipment required by the Seller to connect the Goods to the local services (if included) and commission the Goods and the Buyer shall be responsible, at its own cost, for the erection, maintenance and dismantling of such access equipment;
 - 14.5.7 ensure that all builder's work is carried out by the Buyer or third parties in good time ahead of the Seller performing the Services;
 - 14.5.8 inform the Seller, at the time of the Order if it needs to send any equipment to be cleaned by the Seller, or if it requires any other service arrangements, before the installation services are performed and the Buyer shall ensure this is arranged in good time;
 - 14.5.9 ensure that all utility services required for the performance of the Services are available within reasonable distance, and not more than two metres, from the connection point location, and provided with industry standard connections and shutoff provisions;
 - 14.5.10 ensure that, with regard to offloading and positioning of equipment and materials, a clear level access is available;
 - 14.5.11 provide all necessary assistance with portage, including lifting equipment if applicable;
 - 14.5.12 supply any specialist equipment (including protective equipment) required in order for the Seller to perform the Services, in the specific sizes requested by the Seller beforehand and in the event that the Buyer is unable to provide the necessary specialist equipment, and a return visit is required, this will be subject to an additional charge.
- 14.6 If the Seller's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("**Buyer Default**"):
- 14.6.1 without limiting or affecting any other right or remedy available to it, the Seller shall have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
 - 14.6.2 the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 14.6; and
 - 14.6.3 the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.

- 14.7 In the event that no parking is available at the Premises, the Seller shall be entitled to charge the Buyer for any parking fees incurred as an expense. Such fees will be added to the total cost and are payable by the Buyer
- 14.8 It is the Buyer's sole responsibility to ensure that any required services are booked in accordance with COSHH (Control of Substances Hazardous to Health) standards. The Seller shall not be liable for any failure to comply with such standards unless specifically agreed in Writing.
- 14.9 The preparation of induction materials and other special documents, such as special RAMs (Risk Assessment Method Statements), will incur an additional charge of £75 per document.
- 14.10 The waiting time for the Seller's engineer is limited to a maximum of one hour. Should the engineer be unable to start the Services within this time frame, the Buyer will be fully charged for the visit.
- 14.11 In the event of there being more than one interested party, inspection of the completed Services shall be the sole responsibility under this Contract of the Buyer, being the person or body issuing the purchase order. A single list of work required under the Contract to complete the Contract shall be issued when the installation is completed for inspection. The Seller does not under any circumstances allow for any withholding of payment against a site installation or product defect.

15. CANCELLATION OF SERVICES

- 15.1 In respect of the Services, the Buyer may cancel the Contract, by giving Written notice to the Seller.
- 15.2 Where notice to cancel is received by the Seller at least 3 working days before the date on which the Services are due to be performed, the Seller will refund what the Buyer has paid for the Services.
- 15.3 Where notice to cancel is received by the Seller less than 3 working days before (but at least the day before) the date on which the Services are due to be performed, the Seller will charge a cancellation fee of £150.
- 15.4 Where notice to cancel is received by the Seller on the date on which the Services are due to be performed, the Seller will charge a cancellation fee of 100% of the price of the Services and, in addition, the Seller will charge any non-refundable expenses already incurred.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 The Intellectual Property Rights in all the Seller's documents including drawings and sketches furnished by the Seller to the Buyer for the purposes of this Contract, shall at all times remain vested in the Seller and neither they nor their contents shall be used for any purposes other than that for which they were furnished without the Seller's express written consent.

16.2 The Buyer acknowledges that:

16.2.1 ownership of any moulds, tools or other materials created by, or on behalf of, the Seller for the manufacture of any Goods (including any bespoke Goods), shall at all times remain vested in the Seller; and

16.2.2 all Intellectual Property Rights used for the manufacture of the Goods shall remain the exclusive property of the Seller or, where applicable, the third party licensor from whom the Seller derives the right to use them.

17. CONFIDENTIALITY

17.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, 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 17.2.

17.2 Each party may disclose the other party's confidential information:

17.2.1 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 17; and

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

17.3 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.

18. GENERAL

18.1 **Force Majeure.** The Seller shall not be liable to the Buyer in any manner whatsoever for any failure or delay in performing its obligations under the Contract due to force majeure which expression for the purposes of these Conditions means any cause beyond the reasonable control of the Seller which for the avoidance of doubt and without prejudice to the generality of the foregoing shall include governmental actions, war, riots, civil commotion, fire, flood, epidemic, pandemic, labour disputes involving the work force or any part thereof of the party in question, restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials, currency restrictions and Acts of God. If the period of failure or delay in performance continues for 90 days, the Buyer may terminate the Contract by giving not less than 30 days' written notice to the Seller.

18.2 **Assignment and other dealings.**

- 18.2.1 The Seller 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.
- 18.2.2 The Buyer 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 without the prior Written consent of the Seller.
- 18.3 **Notices.** Notice given under the Contract shall be in Writing, sent to the other party's registered office (or to such other addresses as may be notified by the parties from time to time) and shall be delivered personally, sent by email or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received:
- 18.3.1 if delivered personally, at the time of the delivery;
- 18.3.2 in the case of email, 09:00 on the working day following transmission;
- 18.3.3 in the case of airmail, five working days following posting; or
- 18.3.4 in the case of pre-paid first class post or recorded delivery two working day from the date of posting.
- 18.4 Clause 18.3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 18.5 **Entire agreement.**
- 18.5.1 The Contract constitutes the entire agreement between the parties.
- 18.5.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 18.6 **Waiver.** No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.7 **Severance.** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.
- 18.8 **References.** The Buyer will if requested by the Seller provide two satisfactory written trade references, and one banker's reference.
- 18.9 **Disputes.** Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.

18.9.1 The number of arbitrators shall be one.

18.9.2 The seat, or legal place, of arbitration shall be London, England.

18.9.3 The language to be used in the arbitral proceedings shall be English.

18.10 **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 the laws of England and Wales.