

## **GENERAL TERMS AND CONDITIONS OF SALE**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In these conditions, the following words shall have the following meanings:-

“Buyer Background IPR”	means all Intellectual Property Rights that are owned by the Buyer prior to commencement of this Purchase Order or which have been developed independently of the Purchase Order and other than Company Background IPR and Foreground IPR.
“Buyer”	means the company, partnership, business or individual named in the Purchase Order and who wishes to engage the Company for the supply of Goods and/or execution of Services as defined in the Purchase Order, including their legal personal representatives, successors and assigns.
“Company”	means Constant Systems Limited registered in England under number 02433639; or any subsidiary company within the group of companies, as named in the Purchase Order.
“Company Background IPR”	means all Intellectual Property Rights in the Company Materials, other than Buyer Background IPR and Foreground IPR.
“Company Materials”	means all materials, equipment and tools, drawings, specifications, data or any other information supplied by the Company to the Buyer, including without limitation, any knowledge disclosed by the Company to the Buyer which might enhance or improve the Goods provided by the Company.
“Conditions”	means the general terms and conditions of sale set out in this document as amended from time to time and (unless the context otherwise requires), including any special conditions agreed in writing between the Company and the Buyer in the Purchase Order.
“Data Protection Legislation”	from the date it comes into force in the UK the General Data Protection Regulation (EU) 20016/670 (as applicable) and the Privacy and Electronic Communications (EC Directive) Regulations and any national implementing laws, regulation and secondary legislation in the UK.
“Data Controller”	the Party that transfers Personal Data to the other Party.
“Data Processor”	the Party that receives Personal Data from the other Party.
“Day”	means a calendar day.
“Foreground IPR”	means all and any Intellectual Property Rights in the Goods, other than Buyer Background IPR and Company Background IPR.
“Goods”	means the equipment, materials, products or any part thereof to be sold or provided to the Buyer by the Company in accordance with the Purchase Order.
“Intellectual Property Rights (IPR)”	means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
“Price”	means the Price for the Goods and/or Services as stated in the Company’s quotation as accepted by the Buyer’s Purchase Order.
“Purchase Order”	means the contract formed by the acceptance of the Purchase Order document and shall incorporate these Conditions as may be amended by special conditions agreed between the Company and Buyer and referred to in the Purchase Order document.
“Services”	means the services to be supplied by the Company in accordance with the Purchase Order.
“Specification”	means any plans, drawings, standards, data or other information relating to the Goods and/or Services. “Personal Data”, “Controller”, “Processor”, “Data Subject” And “Processing” “Third Country” and “International Organisation” have the same meaning as in the Data Protection Legislation.

1.2 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.3 Clause heading are for ease of reference only and shall not affect the construction or interpretation of any clause.

1.4 Words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

1.5 Any phrase introduced by the terms “including, include, in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.6 A reference to “writing” or “written” includes faxes and emails.

### **2. APPLICATION OF TERMS**

2.1 These Conditions are the only Conditions upon which the Company is prepared to supply the Goods and/or Services to the Buyer. These Conditions shall constitute the entire contract between the Company and the Buyer and shall supersede all prior negotiations, statement, representations, promises, assurances, warranties, understandings or agreements relating to the Purchase Order whether written or oral.



- 2.2 These Conditions shall govern the Purchase Order to the entire exclusion of all other terms or conditions to the fullest extent permitted by law (including the Buyer's terms and conditions or those implied by trade, custom, practice or course of dealing).
- 2.3 No terms or conditions endorsed on, delivered with or contained in the Buyer's Purchase Order, confirmation of Purchase Order, Specification or other document shall form part of the Purchase Order simply as a result of such document being referred to in the Purchase Order.
- 2.4 Each Purchase Order or acceptance of a quotation for Goods and/or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions.
- 2.5 No Purchase Order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of the Purchase Order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer or completes Services.
- 2.6 Any quotation is given on the basis that no Purchase Order shall come into existence until the Company despatches an acknowledgement of Purchase Order to the Buyer. Any quotation is valid for a period of ninety (90) Days only from its date, provided the Company has not previously withdrawn it.
- 2.7 These Conditions apply to all sales of Goods and Services by the Company and any variation to these Conditions and any representation about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.
- 2.8 The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not expressly set out in the Purchase Order.
- 2.9 In the event of any inconsistency of any terms or provisions within these Conditions or the Purchase Order, the special conditions expressly stated in the Purchase Order (if any) shall prevail.
- 3. DESCRIPTION AND SPECIFICATION**
- 3.1 The quantity and description of the Goods and or Services shall be as set out in the Company's quotation as agreed by the Buyer's Purchase Order.
- 3.2 All drawings, particulars of weights and dimensions, Specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Purchase Order and this is not a sale by sample.
- 3.3 Any Specification supplied by the Company to the Buyer, or specifically produced by the Company for the Buyer, in connection with the Purchase Order, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Company. The Buyer shall not disclose to any third party or use any such Specification except to the extent it is required for the purpose of the Purchase Order or to enable the Buyer to have the full use of the Goods.
- 4. DELIVERY**
- 4.1 Delivery of the Goods shall be as stated in the relevant Purchase Order, in accordance with Incoterms 2010 Edition where applicable and by any method convenient to the Company and the Buyer will be charged accordingly.
- 4.2 The Buyer shall take delivery of the Goods within seven (7) Days of the Company giving it notice that the Goods are ready for delivery.
- 4.3 Delivery times specified by the Company in its quotation are intended to be business estimates only and the Company will not be liable to the Buyer for any failure to comply with such delivery times.
- 4.4 The Company will not be held liable for any direct, indirect or consequential loss, or any costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or the completion of Services (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Purchase Order.
- 4.5 If Company is delayed in or prevented from performing any of its obligations under the Purchase Order due to the acts or omissions of Buyer, including but not limited to failure to provide Specifications or such other information as Company reasonably requires to proceed expeditiously with its obligations under the Purchase Order, the delivery period and the Purchase Order Price shall both be adjusted accordingly as may be required.
- 4.6 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- (i) risk in the Goods shall pass to the Buyer;
  - (ii) the Goods shall be deemed to have been delivered; and
  - (iii) the Company may store the Goods for the Buyer and the Buyer shall be liable for all related costs and expenses including, without limitation, costs of storage and insurance.



- 4.7 If seven (7) Days after the Day on which the Company notified the Buyer that the Goods were ready for delivery the Buyer has not accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the Price of the Goods or charge the Buyer for any shortfall below the Price of the Goods.
- 4.8 The Company is not bound to deliver the Goods in one lot, shipment or consignment and the Buyer shall accept split deliveries or delivery by separate instalments.
- 4.9 Where Goods are delivered in instalments, each separate instalment shall be invoiced and paid for in accordance with the provisions of the Purchase Order. Each instalment shall be a separate Purchase Order and no cancellation or termination of any one Purchase Order relating to an instalment shall entitle the Buyer to repudiate or cancel any other Purchase Order or instalment.
- 5. NON-DELIVERY**
- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within five (5) Days of the date when the Goods would, in the ordinary course of events, have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Purchase Order rate against any invoice raised for such Goods.
- 6. INSPECTION, TESTING AND CALIBRATION**
- 6.1 Goods will be inspected by Company and, where practicable, submitted to Company's standard tests before despatch. Any additional tests or inspection (including inspection by Buyer or its representative, or tests in the presence of Buyer or its representative and/or calibration) or the supply of test certificates and/or detailed test results shall be subject to Company's prior written Purchase Order. All such additional tests or inspections shall be at the sole cost of the Buyer.
- 6.2 If the Buyer or its representative fails to attend such inspection, tests or calibration after seven (7) Days' notice that the Goods are ready therefore, the inspection, tests and/or calibration will proceed and will be deemed to have been made in the presence of Buyer or its representative and the Company's statement that the Goods have passed such inspection, testing and/or calibration shall be conclusive.
- 7. RISK/TITLE**
- 7.1 The risk in the Goods shall pass to the Buyer upon delivery of the Goods or within seven (7) Days of receiving notice that the Goods are ready for delivery, whichever is the earlier. Risk in the Services shall pass to the Buyer upon completion of such Services.
- 7.2 Title in the Goods and/or Services shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 7.2.1 the Goods and or Services; and
  - 7.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 7.3 Until title in the Goods passes to the Buyer, the Buyer shall:
- 7.3.1 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - 7.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - 7.3.3 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full Price against all risks to the reasonable satisfaction of the Company. On request, the Buyer shall produce the policy of insurance to the Company.
- 7.4 The Buyer can only resell the Goods before ownership has passed to it solely on the following conditions:
- 7.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
  - 7.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal in making such a sale.
- 7.5 The Buyer's right of possession of the Goods shall terminate immediately if:
- 7.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or as a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder, or a resolution is passed, or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;



- 7.5.2 the Buyer suffers any diligence or execution to be levied, on his/its property or fails to observe or perform any of his/its obligations under the Purchase Order or any other Purchase Order between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 7.5.3 the Buyer encumbers or in any way charges any of the Goods.

7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are being stored in order to inspect them, or, where the Buyer's rights to possession has terminated, to recover them.

## **8. PRICE AND PAYMENT**

8.1 Unless otherwise agreed in the Purchase Order, the Price shall be payable in full without set-off, counterclaim or withholding of any kind (save where and to the extent that this cannot by law be excluded) within thirty (30) Days of the Company's invoice date, without further notice from the Company. All sums are to be paid in the currency as specified on the invoice. Time of payment is of the essence.

8.2 The Price for the Goods shall be exclusive of any value added tax, export, import, excise duties and any other taxes or duties. All such taxes or duties shall be payable by the Buyer.

8.3 The Company may invoice on or any time after delivery, or if the Buyer wrongfully fails to take delivery or otherwise suspends or delays delivery, the Company is entitled to invoice from the date the Goods were tendered for delivery.

8.4 If the Buyer fails to make timely payment of any sum due, the Company may suspend the delivery of Goods and/or performance of Services under any Purchase Order until full payment is made. If such failure to make payment continues for more than one month, the Company may without prejudice to any other contractual rights, terminate this Purchase Order and dispose of the any Goods appropriated to the Purchase Order.

8.5 No payment will be deemed to have been received until the Company has received cleared funds.

8.6 Interest shall be payable for late payment by the Buyer of correctly prepared and supported invoices. The amount of interest payable shall be based on the then current annual Bank of England 'Base Rate' plus three percent (3%) per annum and shall be calculated pro rata on a daily basis and on the basis of 365 Days a year. Interest shall accrue on a daily basis from the date on which the sum in question becomes due for payment until the date on which actual payment is made. Any such interest to be claimed by the Company shall be invoiced separately and within ten (10) Days of payment of the invoice to which the interest relates. Payment of the invoice claiming interest shall be in accordance with the provisions of Clause 8.1 hereof.

8.7 Notwithstanding any other provision to the contrary elsewhere in the Purchase Order, all payments payable to the Company under the Purchase Order shall become due immediately upon its termination.

8.8 If the Company is required to carry out extra work or perform additional services (including working overtime or during unusual hours) on the instructions of the Buyer or its representative or because of an lack of instructions or any mistake for which the Buyer is responsible or if progress of the Company's work is interrupted by the Buyer or its agents or servants then the Company reserves the right to make an extra charge.

8.9 The Company reserves the right to charge all increases in cost of material, insurance, freight and labour occurring before the date of completion of order and to correct errors and omissions and also to charge any extra expense arising from delays in execution of work or delivery of goods caused by Purchaser's instructions or lack of instructions.

## **9. WARRANTY**

9.1 The Company warrants that:-

9.1.1 Goods supplied by the Company will be free from defects in materials or workmanship under normal use and care and services will be performed by trained personnel using proper equipment and instrumentation for the particular service provided. The foregoing warranty will apply until the expiration of the warranty period which is twelve (12) months from the date of shipping;

9.1.2 if any of the Goods do not conform to this warranty the Company will at its option either repair or replace non-conforming Goods or take back the non-conforming Goods and refund the appropriate part of the Purchase Order Price;

9.1.3 Should the warranty period given by the original manufacturer be less than that stated in 9.1.1, then Company reserves the right to reduce the warranty period to that given by the manufacturer unless otherwise agreed;

9.1.4 Services supplied by the Company will be performed with all reasonable skill, care and due diligence to be expected of a reputable contractor experienced in the types of Services to be carried out hereunder, be free from defects and in accordance with the relevant Purchase Order. The foregoing warranty will apply until the expiration of the warranty period which is twelve (12) months from the date of completion of the Services;

9.1.5 if the Services do not conform to the warranty provided in clause 9.1.4 above, the Company will rectify the defective Services.



- 9.2 The warranty contained in clause 9.1 is conditional upon:-
- 9.2.1 the Buyer giving written notice to the Company within fourteen (14) Days of the time when the Buyer discovers or ought to have discovered the alleged non-conformity in the Goods;
  - 9.2.2 the Buyer giving the Company reasonable access to inspect the Goods and, if requested by the Company, returning the alleged non-conforming Goods to the Company's premises, carriage paid, for inspection;
  - 9.2.3 the Goods having been properly stored, maintained, handled and installed in accordance with good industrial practises and the Company's recommended procedures; and
  - 9.2.4 the Buyer having paid for the Goods and Services in full.
- 9.3 The Company accepts no liability in respect of:-
- 9.3.1 any modification or alteration required to the Goods made necessary by any legislation, regulation or requirements of any authority after the Purchase Order has been placed;
  - 9.3.2 any repair or replacement required to any Goods where any identification, serial or batch number has been altered, defaced or removed, or if any unauthorised work has been carried out by others;
  - 9.3.3 faults caused by accident, neglect, misuse or normal wear and tear; and
  - 9.3.4 consumable items as listed in the user's manual or service work.
- 9.4 Repair or replacement of defective Goods and the rectification of defective Services shall be the Buyer's sole remedy in respect of defective Goods or Services.
- 9.5 All costs associated with the removal, re-installation or transportation of the Goods or part thereof which are the subject of any claim under this Clause 9 (Warranty) are the responsibility of the Buyer.
- 9.6 This warranty is given in lieu of all warranties and conditions whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) which are hereby excluded to the fullest extent permitted by law.
- 9.7 The terms of this warranty are not transferable to a third party.
- 10. EXPORT**
- 10.1 Buyer confirms that no item, technology, or software which forms part of the Goods received from Company is intended to be shipped, either directly or indirectly, to any country, company or person, or for any end-use, that is prohibited under applicable export control regulations. Buyer shall defend, indemnify and hold harmless Company from and against any and all claims with respect to the Buyer's breach of its obligations under this Clause 10. Buyer waives any claim against Company for any delays in delivery of the Goods which are caused due to export control compliance.
- 11. INTELLECTUAL PROPERTY RIGHTS**
- 11.1 The Buyer shall retain exclusive ownership of all Buyer Background IPR. The Company shall retain exclusive ownership of all Company Background IPR and all Foreground IPR.
- 11.2 The Buyer acknowledges that the Company is the sole owner of any IPR relating to and/or arising from the Purchase Order. Such ownership remains solely with the Company in perpetuity.
- 11.3 In the event ownership of such IPR does not automatically transfer to the Company, the Buyer agrees and shall assign to the Company, with full title and guarantee free from all third party rights, the rights, title and interest in and to the Foreground IPR.
- 11.4 The Buyer shall promptly, at the Company's request, do (or procure the doing of) all such further acts and things and execute (or procure the execution of) all such other documents as the Company may from time to time require for the purpose of securing the rights referred to in Clause 11.3.
- 11.5 For the avoidance of doubt, this Purchase Order shall not be construed as granting to or conferring upon the Buyer, expressly or by implication, any rights or licenses in the IPR received from the Company.
- 12. INDEMNITY PROVISIONS**
- 12.1 Each party (Indemnifying Party) shall be responsible for and shall save, indemnify, defend and hold harmless the other party (Indemnified Party) from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
- (i) Loss of or damage to property of the Indemnifying Party whether owned, hired, leased or otherwise provided by the Indemnifying Party arising from , relating to or in connection with the performance or non-performance of the Purchase Order; and



- (ii) Personal injury including death or disease to any person employed by the Indemnifying Party arising from, relating to or in connection with the performance or non-performance of the Purchase Order; and
- (iii) Personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by any negligent act or omission, or wilful misconduct or breach of duty (whether statutory or otherwise) of the Indemnifying Party. For the purposes of this clause 'third party' shall mean any party which is not a member of the Buyer or Company.

**13. CONSEQUENTIAL LOSS**

13.1 Notwithstanding any other provision of this Purchase Order to the contrary, in no event shall one party be liable to the other party for any losses suffered by it which falls into any one of the following categories of damages, costs, losses or expenses;

- (i) Loss of profit, loss of anticipated profit, loss of production, loss of contracts, loss of revenue, loss of goodwill, loss of use, loss of opportunity, down time costs or any similar economic loss (in all cases, whether direct, indirect) or
- (ii) Indirect damages, costs, losses or expenses of whatever nature, loss by reason of asset shutdown, non-operation costs, increased expense of operation of the asset.

**14. LIMITATION OF LIABILITY**

14.1 Notwithstanding any provision to the contrary, Company's maximum aggregate liability arising from, relating to or in connection with the performance or non-performance of the Purchase Order shall not exceed 100% of the value of the Goods and/or Services which give rise to such liability. Buyer shall indemnify, defend and hold Company harmless from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities which exceed this value.

**15. TERMINATION**

15.1 The Company may terminate the Purchase Order with immediate written notice if the Buyer fails to pay the Purchase Order Price in accordance with Clause 8.4.

15.2 The Buyer may terminate or suspend its order for all or part of the Goods and/or Services covered by the Purchase Order only upon thirty (30) days' prior notice and upon the Company's written consent. Such termination shall be subject to the provisions of Clause 15.3.

15.3 In the event of suspension of the Purchase Order by the Buyer, where such suspension exceeds a period of thirty (30) Days, Company may serve a notice on the Buyer requesting to proceed with the delivery of the Goods or part thereof. If the Buyer does not grant such permission within seven (7) Days of request, Company at its sole discretion, can elect to treat the suspension as termination in accordance with this Clause 15.

15.3 In the event of termination of the Purchase Order by the Buyer, the Company shall, at its sole discretion, exercise any of the following options:

- (i) Recover all costs incurred by the Company up to the time of cancellation, including work in progress and any committed costs; or
- (ii) Recover a variable charge based on the full value of the Purchase Order dependent upon the time elapsed after placement of the Purchase Order, whichever be the greater. The variable charges are defined as follows:

2 weeks	25%
3-4 weeks	30%
5-6 weeks	50%
7-8 weeks	75%
9 weeks or more	100%

**16. ASSIGNATION**

16.1 The Company may at any time assign the Purchase Order or any of its rights or obligations under it.

16.2 The Buyer shall not, and shall not purport to assign or otherwise transfer the Purchase Order or any rights or obligations under it without the Company's prior written consent. Any such consent shall not excuse the Buyer from performance of any obligations on its part to be performed.

**17. SEVERABILITY**

17.1 If and in so far as any part or provision of these Conditions is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of the Purchase Order and the remaining provisions of the Purchase Order shall continue in full force and effect.

**18. FORCE MAJEURE**

18.1 The Purchase Order shall be suspended, without liability, in the event and to the extent that its performance is prevented or delayed due to any circumstance beyond the reasonable control of the party affected, including but not limited to: Act of God, war, armed conflict or terrorist attack, riot, fire, explosion, accident, flood, severe weather, sabotage, governmental decisions or actions including but not limited to prohibition of exports or the failure to grant or revocation of applicable export licenses, or labour trouble, strike, lockout or injunction.

18.2 If either Party is delayed or prevented from performance of its obligations by reason of this clause for more than 180 consecutive calendar Days, either party may terminate the then unperformed element of the Purchase Order by notice in writing given to the other party, without liability provided that the Buyer shall be obliged to pay the reasonable cost and expense of any work in progress, committed costs and to pay for all Goods delivered as at the date of termination. Company may deliver by instalments and if so each delivery shall constitute a separate Purchase Order and



failure by the Company to delivery any one or more of the instalments in accordance with their terms shall not entitle the Buyer to terminate the whole of the Purchase Order or treat it as repudiated.

**19. CONFIDENTIALITY**

19.1 A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, initiatives, IPR information or commercially sensitive information which may be disclosed to the receiving party by the other party ("Disclosing Party"), its employees, agents, or subcontractors, and any other confidential information concerning the Disclosing Party's business, its product or its services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agent or subcontractors who need to know the same for the purpose of discharging the Receiving Party's obligations under the Purchase Order, and shall ensure that such employees, agents or subcontractors shall keep such information confidential for the duration of the Purchase Order and for a period of five (5) years after termination or completion of the Purchase Order.

**20. VARIATION**

20.1 Any variation to the Purchase Order shall only be effective if in writing and signed by authorised representatives of both parties.

**21. WAIVER**

21.1 No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.

**22. BUSINESS ETHICS**

22.1 The Company is committed to providing the diligence and care required to prevent any action or condition that might result in a breach of, but not limited to, the UK Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act. The Company is actively involved in establishing and implementing policies and procedures as well as training mechanisms to make its personnel aware of the obligations set out in anti-bribery legislation. Personnel are committed to strictly adhere to policies and procedures put in place by the Company to prevent its personnel from giving or receiving: gifts, payments, loans, or any other inducement for any purpose from any firm, corporation, person or other body in performance of the Purchase Order.

22.2 The Buyer shall be responsible for and shall save, indemnify, defend and hold harmless the Company from any and all claims, losses, damages, costs (including legal costs) expenses and liabilities incurred or arising in respect of any breach of the obligations set out in this Clause 22 by the Buyer, any person working for the Buyer, or any third party retained by the Buyer. The indemnity set out in this Clause 22 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the Buyer and/or any person working for the Buyer, and/or any third party retained by the Buyer.

**23. Data Protection**

23.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 23 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

23.2 The Data Controller will ensure that all required consents and notices are in place to enable the lawful transfer of Personal Data to the Data Processor for the duration and purposes of the Contract.

23.3 Without prejudice to the generality of this clause, the Data Processor shall, perform its Data Processing obligation under these conditions by processing Personal Data only on the written instructions of the Data Controller unless otherwise required by the laws of any member of the European Union or by the laws of the European Union applicable to the processing of Personal Data (Applicable Laws). When relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Data Processor shall promptly notify the Data Controller of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit The Data Processor from so notifying the Data Controller.

23.4 Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of Data Processing as well as the risk of carrying likelihood and severity for the rights and freedoms of natural persons, the Data Processor shall have in place appropriate technical and organisational measures to ensure a level of security appropriate to that risk.

23.5 The Data Processor shall take all reasonable steps to ensure that access to Personal Data is strictly limited to those individuals who need to know/access it for the purposes of the contract. All personnel who have access to and/or process the Personal Data shall be subject to confidentiality undertakings.

23.6 The Data Processor shall not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:

- a. the Data Processor has provided appropriate safeguards in relation to the transfer;
- b. the Data Subject has enforceable rights and effective legal remedies;
- c. the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any



Personal Data that is transferred; and

- d. the Data Processor complies with reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;

23.7 The Data Processor shall not appoint any third party processor of Personal Data under this agreement except with the prior written consent of the Data Controller and subject to the follow provisions:

- a. The Data Processor shall carry out adequate due diligence to ensure that the Sub processor is capable of providing the level of protection required by these terms; and
- b. The agreement between the third party processor and the Data Processor shall governed by a written contract including terms which offer at least the same level of protection as those set out in these terms; and
- c. The Data Processor shall remain fully liable for all acts and omissions of any third party processor appointed by it pursuant to this clause.

For the purposes of this clause 'third party processor' shall mean any party which is not a member of the Company or Buyer.

23.8 The Data Processor shall assist the Data Controller, at no cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators

23.9 Data Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 23. The Supplier shall allow for audits by the Company or the Company's designated auditor.

23.10 Data Processor shall notify the Data Controller without undue delay on becoming aware of a Personal Data breach

23.11 Each Party (Indemnifying Party) shall be responsible for and shall save, defend and hold harmless the other party (Indemnified Party) from and against all claims, losses, damages, costs (including legal costs) expenses, liabilities, fines, penalties, and sanctions in respect of:

- a. Any breach of the Indemnifying Party's obligations under these conditions or Data Protection Legislation; or
- b. Any act or omission relating to the use of Personal Data which is contrary to the instructions of the relevant Data Controller.

23.12 Data Processor shall at the written direction of the Data Controller, delete or return Personal Data and copies thereof to the Data Controller on termination of the agreement unless required by Applicable Law to store the Personal Data.

23.13 The Company may, at any time on not less than 30 days' notice, revise this Clause 23 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement)

#### **24. NOTICES**

24.1 Notices may be served by telex or fax and are deemed served the next working Day after despatch.

#### **25. DISPUTE RESOLUTION**

25.1 In the event of any dispute arising under or in connection with the Purchase Order or the supply of the Goods or Services then every effort shall be made to resolve and agree such a dispute by discussion between the Parties. If, after a maximum period of two (2) months, unless otherwise agreed by the Parties, there is a failure to reach agreement, the Parties can elect to either (i) refer the dispute to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either Party by the President for the time being of the Law Society of England, or (ii) commence legal proceedings.

#### **26. GOVERNING LAW**

26.1 The construction, validity and performance of this Purchase Order shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.