



More than **sensors + automation**

**JUMO Instrument Co. Ltd.**  
JUMO House  
Temple Bank, Riverway  
Harlow, Essex CM20 2DY, UK

Phone: +44 1279 63 55 33  
Fax: +44 1279 63 52 62  
E-mail: sales@jumo.co.uk  
Internet: www.jumo.co.uk

## SUPPLY OF GOODS AGREEMENT TERMS AND CONDITIONS

The Customer's attention is drawn in particular to the provisions of Clause 17.

### 1. Interpretation

The following definitions and rules of interpretation in this clause apply in this agreement.

#### 1.1 Definitions:

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

**Call Off Order:** A call off order is an order placed for a specific Quantity, which the customer can call off of a contract as per their requirements for a period of 12-months

**Claim:** has the meaning given in clause 15.2.

**Confidential Information:** any information of a confidential nature concerning the business, affairs, customers, clients or suppliers of the other party or of any member of its Group, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

**Contract:** the contract formed between the Supplier and the Customer for the sale and purchase of goods in accordance with clause 2.

**Delivery:** completion of delivery of Goods specified in an Order in accordance with clause 7.3.

**Delivery Date:** the date specified for delivery of Goods OR (term contracts only) specified in the Order in accordance with clause 4.2.

**Delivery Location:** the address for delivery as outlined in the Order.

**Force Majeure Event:** has the meaning given in clause 23.2.

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

**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, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

**Month:** a calendar month.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form or as outlined in clause 4.

**Representatives:** has the meaning given in clause 17.2.

**Scheduled Order:** A scheduled Order is an order placed for a specific Quantity with specified dates of when they are required for delivery, for the entire order

**Specification:** any relevant specification for the Goods, notified to the Supplier verbally or in writing, which shall be accepted by the Supplier in writing, including any related datasheets and drawings, that is agreed by the Customer and the Supplier. Such acceptance shall be sent to the Customer as part of the quotation and order confirmation. It is the Customer's responsibility to notify the Supplier immediately in case of discrepancies.

#### Standard Stock Goods:

**Contract Term:** the term of the agreement, as determined in accordance with clause 3.

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

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

1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the Schedules.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to **writing** or **written** includes fax and email.

1.11 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.12 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.13 References to clauses and Schedules are to the clauses and Schedules of this agreement; and references to paragraphs are to paragraphs of the relevant Schedule.

1.14 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.

### 2. Basis of contract

2.1 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 trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence via quotation and or order confirmation.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 3 Months from its date of issue.

### 3. Contract Order Commencement and term

This agreement shall begin on the Commencement Date and shall continue for a period of twelve months, unless terminated earlier in accordance with clause 20, until the third anniversary of the Commencement Date, when it shall terminate automatically without notice (Term).

### 4. Contract Order

4.1 Each Order shall be deemed to be a separate offer by the Customer to purchase Goods on the terms of this agreement, which the Supplier shall be free to accept or decline at its absolute discretion. Contract orders are accepted as 'scheduled' or a 'call off' basis.

4.2 Each Order shall:

(a) be given in writing or, if given orally, shall be confirmed in writing within two Business Days; and

(b) specify the type and quantity of Goods ordered together with the Specification; and

(c) specify the Delivery Schedule on which the Goods specified in the Order are to be ready for Delivery unless the parties agree otherwise. If the Delivery Date is to be specified after the placing of an Order, the Customer shall give the Supplier reasonable advance notice of the relevant information.

4.3 The Supplier shall assign an Order Number to each Order it accepts and notify those Order Numbers to the Customer.

4.4 References in this agreement to Orders shall, where applicable, be read as references to instalments.

4.5 If the Customer amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of deemed receipt of the amendment or cancellation, except that the Customer shall have no liability to the Supplier where the amendment or cancellation results from the Supplier's failure to comply with its obligations under this agreement

### 5. Goods

5.1 The Goods are described in the Specification.

5.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Specification. This clause 5.2 shall survive termination of the Contract.

5.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

### 6. Manufacture, quality and packing

6.1 The Goods supplied to the Customer by the Supplier under this agreement shall:

(a) conform to the Specification;

(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier;

(c) be free from defects in design, material and workmanship and remain so for 12 months after Delivery; and

(d) comply with all applicable statutory and regulatory requirements.

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

6.3 The Supplier shall ensure that the Goods are properly packed and secured in a manner to enable them to reach their destination in good condition.



More than **sensors + automation**

- 6.4 The Supplier shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Goods in accordance with the terms of this agreement.
- 6.5 The Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling, and delivery of the Goods.
- 7. Delivery**
- 7.1 Each delivery of Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the part number of the Goods, where applicable), and any special storage instructions. (if any).
- 7.2 The Supplier may deliver Orders by instalments, which may be invoiced and paid for separately. References in this agreement to Orders shall, where applicable, be read as references to instalments. All goods shall be delivered within twelve months from the date when the first scheduled delivery occurs.
- 7.3 Delivery is completed when the Goods are unloaded at the Delivery Location or when the Customer collects the Goods from the Supplier's premises.
- 7.4 Delays in the delivery of an Order shall not entitle the Customer to:
- (a) refuse to take delivery of the Order; or
  - (b) claim damages; or
  - (c) terminate this agreement, subject always to clause 18.2(c) and clause 18.2(n).
- The Supplier shall have no liability for any failure or delay in delivering an Order to the extent that any failure or delay is caused by the Customer's failure to comply with its obligations under this agreement.
- 7.5 If the Customer fails to take delivery of an Order within three Business Days of the Supplier notifying the Customer that the Order is ready for collection, then, except where that failure or delay is caused by the Supplier's failure to comply with its obligations under this agreement:
- (a) delivery of the Order shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Order was ready for collection; and
  - (b) the Supplier shall store the Order until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 7.6 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 7.7 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 8. Acceptance and defective goods**
- 8.1 The Customer may reject any Goods delivered to it that do not comply with clause 6.1, provided that:
- (a) notice of rejection is given to the Supplier:
    - (i) in the case of a defect that is apparent on normal visual inspection, on Delivery;
    - (ii) in the case of damage within seven business days from delivery;
    - (iii) in the case of a latent defect, within a reasonable time of such latent defect becoming apparent; (this right can only be exercised if the Customer inspected the working condition of the Goods within 1 month of the Goods being delivered to the Customer); and
  - (b) none of the events listed in clause 8.5 apply.
- 8.2 The Customer may return any incorrectly or over ordered Standard Stock Goods subject to the Supplier's prior approval. Such return will be subject to a 20% re-stocking fee, minimum charge of £10.00.
- 8.3 The Customer shall be liable for the acts and/or omissions of its employees, agents servants and/or subcontractors as though they were its own acts and/or omissions under this Contract.
- 8.4 If the Customer fails to give notice of rejection in accordance with clause 8.1, it shall be deemed to have accepted these Goods.
- 8.5 The Supplier shall not be liable for a Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:
- (a) the Customer makes any further use of those Goods after giving notice in accordance with clause 8.1;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
  - (d) the Customer alters or repairs those Goods without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.6 If the Customer wishes reject the Goods under clause 8.1 the Customer should notify the Supplier and seek consent for return. The Goods should then be returned to the Supplier to allow the Supplier to inspect and determine the best course of action.
- 8.7 Within 14 Business Days of receipt of the rejected Goods the Supplier shall provide the Customer with a report on findings and proposed resolution.
- 8.8 Subject to clause 8.5 and 8.7 if the Supplier concludes that the Customer rightfully rejected the Goods the Customer shall be entitled to:
- (a) require the Supplier to repair or replace the rejected Goods; or
  - (b) require the Supplier to repay the price of the rejected Goods in full.
- Once the Supplier has complied with the Customer's request, it shall have no further liability to the Customer for the rejected Goods' failure to comply with clause 6.1.
- 8.9 The terms of this agreement shall apply to any repaired or replacement Goods supplied by the Supplier.
- 9. Title and risk**
- 9.1 Risk in Goods shall pass to the Customer on Delivery.
- 9.2 Title to Goods shall not pass to the Customer until the Goods have been paid for in full.
- 9.3 Until title to Goods has passed to the Customer, the Customer shall:
- (a) store those Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to those Goods; and
  - (c) maintain those Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Supplier to inspect those Goods and the insurance policy.
- 9.4 If before title to Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 18.2(d) to clause 18.2(n) inclusive, then, without limiting any other right or remedy the Supplier may have. The Supplier may at any time:
- (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
  - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Goods are stored to recover them.
- 10. Insurance**
- 10.1 During this agreement the Supplier shall maintain in force the following insurance policies with reputable insurance companies:
- (a) public liability insurance with a limit of at least £5 million a claim; and
  - (b) product liability insurance with a limit of at least £5 million for claims arising from a single event or series of related events in a single calendar year.
- 10.2 The Supplier shall ensure that any sub-contractors also maintain adequate insurance having regard to their obligations under this agreement.
- 10.3 The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 11.1.
- 11. Goods prices**
- 11.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 11.2 The prices of the Goods are exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier any additional amounts in respect of VAT as are chargeable on a supply of Goods.
- 11.3 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- d) Customer orders involving a delivery in separate consignments over a period of time via a 'scheduled or call-off order' are accepted on the basis of an agreed delivery schedule. Where such scheduled deliveries are not satisfied by an agreed date, the Supplier reserves the right to deliver and invoice any Goods not called off within the agreed time frame. Where the Supplier agrees to extend the period, the Supplier reserves the right to amend the price of the goods in line with current pricing.
- 11.4 The prices of the Goods are exclusive of the costs of packaging, insurance and carriage of the Goods, which shall be paid by the Customer.
- 12. Terms of payment**
- 12.1 The Supplier shall be entitled to invoice the Customer for each Order on or at any time after the Goods being dispatched to the Customer Each invoice shall quote the relevant Order Numbers.
- 12.2 A minimum order charge of £ 130 is applicable for all stock items, and minimum order charge of £55 is applicable for any consumable goods.
- 12.3 The Customer shall pay invoices in full and in cleared funds within 30 days of the date that appears on the invoice. Payment shall be made to the bank account nominated in writing by the



Supplier. Both parties agree that time of payment is of the essence.

- 12.4 If a party fails to make any payment due to the other under this agreement by the due date for payment, then, without limiting the other party's remedies under clause 18.2, the defaulting party shall pay interest on the overdue amount at the rate of 4% a year above LLOYD'S Bank base rate from time to time. This interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. In relation to payments disputed in good faith, interest under this clause 11.4 is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
- 12.5 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all evidence as may be reasonably necessary to verify the disputed invoice or request for payment. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 11.3.
- 12.6 The parties do not have the right to set off any liability of the other party to it against any liability it has to the other party, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement.
- 12.7 All payments payable to the Supplier by the Customer under this agreement shall become immediately due and payable:
- (a) on termination of this agreement for any reason; or
  - (b) if the Customer becomes subject to any of the events listed in clause 18.2(d) to clause 18.2(l) inclusive.

This clause 12.7 is without prejudice to any right to claim for interest under the law or under this agreement.

### 13. Compliance with laws and policies

- 13.1 In performing its obligations under the agreement, the Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force; and
- 13.2 The Customer may terminate the agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of clause 13.1.

### 14. Indemnity

- 14.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to 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 and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply or use of the Goods.
- 14.2 The Supplier's liability under this indemnity is conditional on the Customer discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Customer that may reasonably be considered likely to give rise to a liability under this indemnity (Claim), the Customer shall:
- (a) as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
  - (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier;
  - (c) give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense to assess the Claim); and
  - (d) be deemed to have given the Supplier sole authority to avoid, dispute, compromise or defend the Claim.

- 14.3 Nothing in this clause 14.3 shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

### 15. Limitation of liability

- 15.1 This clause 15 sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other for:
- (a) any breach of this agreement however arising;
  - (b) any use made or resale of the Goods by the Customer, or of any product incorporating any of the Goods; and
  - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 15.2 Nothing in this agreement shall limit or exclude the liability of either party for:
- (a) death or personal injury resulting from negligence; or
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (d) breach of section 2 of the Consumer Protection Act 1987; or
  - (e) the indemnity contained in clause 13; or
  - (f) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 15.3 Without prejudice to clause 15.2, the Supplier's total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to:
- a) the price of the Goods; or
  - b) any amount recoverable under a policy of insurance maintained by the Supplier (less an amount in relation to the excess payable by the Supplier); whichever is the higher.
- Without prejudice to clause 15.2, the Customer's total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited as follows: for non-payment of invoices for Goods purchased, to the amount unpaid, and any interest due on such amount under clause 12.4.

### 16. Assignment and other dealings

- 16.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 16.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

### 17. Confidentiality

- 17.1 Each party undertakes that it shall not at any time during this agreement and for a period of two years after termination disclose to any person any Confidential Information, except as permitted by clause 17.2.
- 17.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, agents, consultants or subcontractors (Representatives) who need to know this information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 17 as though they were a party to this agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause 17; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 17.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

### 18. Termination and suspension

- 18.1 Without affecting any other right or remedy available to it, either party may terminate this agreement on giving not less than six months' written notice to the other party, provided that any notice to terminate served under this clause 18.1 shall not expire before the second anniversary of the Commencement Date.
- 18.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - (b) the other party commits a material breach of any other term of this agreement and that breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - (c) the other party repeatedly breaches any of the terms of this agreement in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
  - (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2);
  - (e) the other party begins negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
  - (h) bankruptcy petition is filed;
  - (i) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - (j) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
  - (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in



clause 18.2(d) to clause 18.2(k) inclusive;

- (m) the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- (n) any Force Majeure Event prevents the other party from performing its obligations under this agreement for any continuous period of three months.

For the purposes of clause 18.2(b), material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit of which the terminating party would otherwise derive from: a substantial portion of this agreement; over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

18.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the agreement or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 18.2(d) to clause 18.2(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this agreement on the due date for payment.

#### 19. Obligations on termination

On termination of this agreement, each party shall promptly:

- (a) return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it in connection with the supply and purchase of the Goods under this agreement;
- (b) return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
- (c) erase all the other party's Confidential Information from its computer systems (to the extent possible); and
- (d) on request, certify in writing to the other party that it has complied with the requirements of this clause 19.

#### 20. Consequences of termination

20.1 On termination of this agreement the following clauses shall continue in force:

- (a) clause 14 (Indemnity);
- (b) clause 15 (Limitation of liability);
- (c) clause 17 (Confidentiality);
- (d) clause 19 (Obligations on termination);
- (e) clause 30 (Governing law); and
- (f) clause 31 (Jurisdiction).

20.2 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of the agreement that existed at or before the date of termination.

#### 21. Force majeure

21.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event as listed in clause 21.2.

21.2 Force Majeure Event means any circumstance not in a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination, or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident; and
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (h) non-performance by suppliers or subcontractors; and
- (i) interruption or failure of utility service.

#### 22. Costs

Except as expressly provided in this agreement, each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution and registration of this agreement and any documents referred to in it.

#### 23. Severance

23.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If that modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to, or deletion of, a provision or part-provision under this clause 23 shall not affect the validity and enforceability of the rest of this agreement.

23.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### 24. Variation

No variation of this agreement shall be effective unless it is in writing and signed by both parties (or their authorised representatives).

#### 25. Waiver

25.1 A waiver of any right or remedy under this agreement or by law shall only be effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

25.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

25.3 A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

#### 26. Notices

26.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) 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); or
- (b) sent by fax to its main fax number and sent by email to the address specified in the Order.

26.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by fax or email, at 9.00 am on the next Business Day after transmission.

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

#### 27. Entire agreement

27.1 This agreement 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.

27.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies for, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

27.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

27.4 Nothing in this clause 27 shall limit or exclude any liability for fraud.

#### 28. Third party rights

Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

#### 29. Counterparts

This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

#### 30. Governing law

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

#### 31. Jurisdiction

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