

PROXIMA POWDER METALLURGY LIMITED

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

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

1.1. Definitions:

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

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Company: Proxima Powder Metallurgy Limited (registered in England and Wales with company number 10490656).

Conditions: the terms and conditions set out in this document as amended from time to time.

Contract: the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions created in accordance with condition 2.4.

Customer: the person or firm who purchases the Goods from the Company.

Delivery Location: has the meaning given in condition 4.3.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control including but not limited to acts of God, strikes, lockouts or other industrial action, rules, regulations, requisitions or orders of the Government or any local authority or war, strike, accident, fire, epidemic, pandemic or shortage of labour or materials, fuel or power or non-delivery by the Company's suppliers, import or export regulations or embargoes or damage to or destruction of the whole or part of the Goods.

Goods: the alloys, material or machined components (or any part of them) set out in the Order.

Intellectual Property Rights: patents, 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 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.

London Clearing Bank: a bank that makes use of the central clearing house in London for the transfer of credits and cheques between banks.

Material Adverse Change: an event as described in condition 5 or a change in the circumstances or costs of the production, manufacturing, freight or supply of the Goods to be supplied under the Contract; the cost of raw materials, power, energy or fuel; the types or rates of tax contributions, duties, tariffs, customs or levies; foreign exchange rates; currency regulations; or interest rates or the rate of inflation, which in the Company's sole discretion (acting reasonably):

(a) constitutes a material impairment of its ability to perform its obligations under the Contract;

(b) affects the Company's ability to supply Goods at the prices and/or volumes it is required to supply under the Contract; or

(c) makes the continued performance of the Company's obligations under the Contract materially more onerous than they were prior to that event or change.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Company's quotation as the case may be.

Specification: any specification for the Goods, including any related plans and drawings, that is provided by the Company to the Customer or by the Customer to the Company agreed by a suitably qualified representative of the Customer and the Company.

1.2. Interpretation:

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

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

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

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

1.2.5. A reference to **writing** or **written** excludes fax but not email.

2. BASIS OF CONTRACT

2.1. All Contracts entered into for the sale or supply of Goods between the Company and the Customer are subject to the following Conditions. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing and no other terms and conditions or verbal statements will be binding on the Company unless the Company expressly otherwise agrees in writing.

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. Any tender or quotation given by the Company shall not constitute an offer and will have effect only for seven days (unless otherwise stated) from its date of issue.

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

2.5. Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

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- 2.6. Orders placed cannot be cancelled or amended (including any requests for delayed delivery) except with the Company's consent in writing and a charge made and on terms which will indemnify the Company against loss. Goods returned without the Company's consent will not be accepted for credit.
- 3. GOODS**
- 3.1. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer:
- 3.1.1. the Customer shall be solely responsible for the Specification and ensuring that it is accurate. The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Company shall notify the Customer in writing in any such event;
- 3.1.2. the Company shall in no way be liable for any loss or damage of whatsoever nature arising in any way out of the use of defective designs specifications or information supplied by or on behalf of the Customer.
- 3.2. The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with (a) any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Company's use of the Specification provided by the Customer (b) arising in any way out of the use of any other defective designs, specifications or information supplied by or on behalf of the Customer and (c) the machining or use of the Goods by the Customer or any third party. This condition 3.2 shall survive termination of the Contract.
- 3.3. The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Company shall notify the Customer in any such event.
- 3.4. All Intellectual Property Rights in or arising out of or in connection with the Goods (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Company.
- 3.5. The Company grants to the Customer or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual licence to use any Intellectual Property Rights in or arising out of or in connection with the Goods only to the extent necessary and then solely for the purpose of using and operating the Goods.
- 3.6. The Customer shall not sub-license, assign or otherwise transfer the rights granted by condition 3.5 or do anything or act in any way that is or may be inconsistent with or prejudicial to the Company's ownership of its Intellectual Property Rights.
- 3.7. The Customer grants the Company a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Company for the term of the Contract for the purpose of supplying the Goods to the Customer.
- 4. DELIVERY**
- 4.1. The Company reserves the right to dispatch and invoice any part of any order when available.
- 4.2. If the Company requires the Customer to return any packaging materials to the Company, the Customer shall make any such packaging materials available for collection at such times as the Company shall reasonably request.
- 4.3. The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Company notifies the Customer that the Goods are ready. The Goods shall be deemed to have been delivered to the Customer at the moment of passing of the risk as mentioned in condition 10.
- 4.4. Where the Company has agreed to deliver the Goods to the Customer, using its own transport, delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.5. Where the Customer has agreed to collect the Goods or to be responsible for transportation of the Goods delivery is completed on dispatch of the Goods from the Company's works.
- 4.6. Unless otherwise agreed in writing the Company reserves the right to charge the Customer the cost of transportation on all orders.
- 4.7. The Company reserves the right to re-charge to the Customer any demurrage costs incurred in the event of vehicles being unduly delayed at the Customer's or consignee's works when delivering.
- 4.8. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Any delivery estimates provided shall run from the acceptance of the Customer's order or if later the receipt by the Company of all necessary information and drawings to enable it to proceed with the order. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.9. If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.10. If the Customer or its carrier fails to take or accept delivery of the Goods within fourteen (14) days of the Company notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract in respect of the Goods:
- 4.10.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifteenth day after the day on which the Company notified the Customer that the Goods were ready; and
- 4.10.2. the Customer shall store the Goods until actual delivery takes place and charge the Customer for all reasonable related costs and expenses (including return transport, storage and insurance).
- 4.11. All storage of the Customer's materials is at the Customer's risk and the Company accepts no liability for any damage to or loss of such materials howsoever arising, including transportation to or from the customer's premises.
- 4.12. If twenty-one (21) days after the day on which the Company notified the Customer that the Goods were ready for delivery

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the Customer has not taken or accepted actual 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 Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

- 4.13. The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment and cancellation of any one instalment or part delivery shall not void or affect Contracts as to the other instalments or part deliveries.
- 4.14. Where delivery is made by the Company's transport the Company shall not be liable for any loss or damage of or to the Goods in the course of transit unless the Company is notified in writing within three days of delivery of the loss or damage complained of.
- 4.15. It is the Customer's responsibility to notify the Company if the Goods have not been received by the Customer within seven (7) days of the date of receipt of the Company's invoice therefore or in the case of Goods which are exported within seven (7) days of the scheduled date of delivery. If no notification is made the Customer shall be deemed to have received the Goods.

5. MATERIAL ADVERSE CHANGE

- 5.1. Where a Material Adverse Change occurs, or in the Company's reasonable opinion is likely to occur, the Company shall notify the Customer in writing ("**Change Notice**") as soon as reasonably practicable, providing within the Change Notice details of the Material Adverse Change and the impact this will have on the supply of Goods, including but not limited to:
- 5.1.1. time of delivery;
 - 5.1.2. volumes of Goods to be supplied;
 - 5.1.3. specification of Goods to be supplied;
 - 5.1.4. Contract price; and
 - 5.1.5. any other term of the Contract.
- 5.2. If the Customer agrees the terms of the Change Notice, it shall sign and date the Change Notice and the Change Notice will amend the Contract from the date of the Change Notice.
- 5.3. If the Customer does not agree the terms of the Change Notice, within fourteen (14) days of the date of the Change Notice, the Company may, without liability, terminate the Contract and any outstanding Orders with immediate effect by giving not less than fourteen (14) days' written notice to the Customer.
- 5.4. Any termination notice given under the condition above must be issued by the Company within six (6) months of the date of the Change Notice.

6. EXPORT SALES

- 6.1. This condition shall apply if the Contract is an Export Sale being a Contract between the Company and a Customer located outside Great Britain.
- 6.2. The Company shall discharge its obligations by presentation of the shipping documents i.e. the invoice and Bill of Lading or Delivery Note to the Customer or his agent. Where the Contract is on CIF Incoterms 2020 the Bill of Lading shall be freight prepaid and in the case of a CIF Contract the certificate of insurance shall be deemed to be a shipping document.
- 6.3. The Contract price shall be paid a) against presentation of the shipping documents and (where required by the

Company to be provided) an irrevocable letter of credit in pounds sterling issued by a London Clearing Bank for the said price which shall be presented to the Company at least three (3) Business Days before shipment or b) if the contract has been agreed on open account trading terms, the Contract price shall be paid in conjunction with those terms. The Customer hereby warrants that if an import licence or permit is required for the importation of the Goods into the country of destination then such import licence or permit has been obtained or will be obtained prior to shipment.

- 6.4. The Customer agrees to comply with all applicable export and import control laws. In no event shall the Customer export or re-export to any entity or person within any country that is subject to sanctions or use, transfer, release, import, export or re-export the Goods in violation of applicable export and import control laws and/or regulations. If the Company is required to prepare an export license application on the Customer's behalf the Customer shall reimburse any costs and acknowledges that this may delay delivery.
- 6.5. Where Goods are sold FOB Incoterms 2020 the responsibility of the Company shall cease immediately once the Goods are placed on board ship and the Company shall be under no obligation to give the Customer the notice specified in Section 32 of the Sale of Goods Act 1979.

7. MEASUREMENT AND QUANTITIES

- 7.1. All Goods supplied whether or not specifically made or cut to size are subject to a maximum 10% variance above or below the weight stated in the Contract. Such excess or shortfall shall not entitle the Customer to reject the Goods.
- 7.2. No claim for shortages, measurements, quantities or for material damaged in transit will be considered by the Company unless:-
- 7.2.1. an appropriately qualified signature i.e. 'material damaged (together with description of damage) **signed**' is made by the Customer on the delivery note; or
 - 7.2.2. the Company is advised in writing, within three (3) days of receipt of material;
 - 7.2.3. the Company is given the opportunity of verifying the same within three (3) days and advised in writing as above; and
 - 7.2.4. 'Unexamined' signatures are **not** acceptable.

8. TESTING AND INSPECTION

- 8.1. Testing and inspection if specified by the Customer or its agent may be at the Company's works or at an approved sub-contractor and such testing and inspection shall be final and conclusive as to the results thereof.
- 8.2. The Company shall not be obliged to produce test and performance certificates or safety critical certificates unless requested by the Customer and accepted by the Company in writing.
- 8.3. The Company uses approved sub-contractor facilities for mechanical or metallurgical examination of its stocks and of materials and to obtain appropriate mechanical or metallurgical test certificates. If requested by the Customer the Company will supply to the Customer a copy of any test certificate which may have been given to the Company by its suppliers or sub-contractors if available, but the Company does not warrant the accuracy of any such certificate and accepts no liability in respect thereof or for any loss resulting from an inaccurate or incorrect certificate.

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9. QUALITY

- 9.1. The Company warrants that on delivery, the Goods shall conform with the Specification and if no Specification has been provided within usual mill tolerances .
- 9.2. No condition or warranty, express or implied is given by the Company as to the quality or fitness of the Goods for any particular purpose unless such purpose is expressly notified to and expressly warranted by the Company in writing. No warranty is provided in respect of Goods that are samples or test pieces.
- 9.3. The Customer must examine the Goods before collection or before it accepts them and must then sign a delivery note.
- 9.4. The Customer shall be deemed to have accepted the Goods and that the Goods comply with the Specification unless;
- 9.4.1. in the case of a defect in the quality or condition of the Goods or the Goods otherwise not complying with the Order which defect or non-compliance was apparent upon careful inspection of the Goods (or would have been had such a careful inspection been carried out) the Customer gives the Company a notice specifying the relevant defect or non-compliance within three (3) days after receiving the Goods and in any event prior to their use or resale and after doing so gives the Company a reasonable opportunity to inspect or test the Goods before they are used or resold;
- 9.4.2. in the case of a defect in the quality or condition of the Goods or the Goods otherwise not complying with the Order which defect or non-compliance was not apparent upon careful inspection of the Goods (or would have been had such a careful inspection been carried out) the Customer gives the Company a notice specifying the relevant defect or non-compliance within six (6) months after receiving the Goods and within three (3) days of such defect being discovered and after doing so gives the Company a reasonable opportunity to inspect the Goods.
- 9.5. Subject to condition 9.4, if the Customer (if asked to do so by the Company) returns such defective Goods to the Company's place of business the Company shall, at its option, replace the defective Goods or refund the price of the defective Goods which do not comply with the warranty in condition 9.1.
- 9.6. The Company shall not be liable for the Goods' failure to comply with the warranty set out in condition 9.1 if:
- 9.6.1. the Customer makes any further use of such Goods after giving notice in accordance with condition 9.4;
- 9.6.2. the defect arises because the Customer failed to follow the Company'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;
- 9.6.3. the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;
- 9.6.4. the Customer alters or repairs such Goods without the written consent of the Company;
- 9.6.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 9.6.6. the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 9.7. Except as provided in this condition 9, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in condition 9.1.
- 9.8. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.9. These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

10. TITLE AND RISK

- 10.1. The risk in the Goods shall pass to the Customer on completion of delivery.
- 10.2. Title to the Goods shall not pass to the Customer until the earlier of:
- 10.2.1. the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- 10.2.2. the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in condition 10.4.
- 10.3. Until title to the Goods has passed to the Customer, the Customer shall:
- 10.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- 10.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 10.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
- 10.3.4. notify the Company immediately if it becomes subject to any of the events listed in condition 13.1.2 to condition 13.1.3.
- 10.4. Subject to condition 10.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 10.4.1. it does so as principal and not as the Company's agent; and
- 10.4.2. title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.
- 10.5. At any time before title to the Goods passes to the Customer, the Company may:
- 10.5.1. by notice in writing, terminate the Customer's right under condition 10.4 to resell the Goods or use them in the ordinary course of its business; and
- 10.5.2. require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

11. PRICE AND PAYMENT

- 11.1. The price of the Goods shall be the price set out in the Contract (net ex Works)

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- 11.2. The Company 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:
 - 11.2.1. any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, transport and other manufacturing costs);
 - 11.2.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 11.2.3. any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.
 - 11.3. Should overtime be worked in respect of the Goods before dispatch at the request of the Customer the additional costs may be charged at the then current rate as an extra and added to the price.
 - 11.4. Any samples submitted by the Company shall be paid for by the Customer at the equivalent price to the Goods unless the Company, in its discretion, agrees to waive payment.
 - 11.5. The price of the Goods:
 - 11.5.1. excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - 11.5.2. excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
 - 11.6. All Goods are sold 'ex-works' unless otherwise stated. If the Company arranges or undertakes the carriage, freight, insurance and any other transport costs beyond the point of delivery such costs shall be for the Customer's account and shall not affect the provisions of the Contract as to the passing of risk.
 - 11.7. The Company may invoice the Customer for the Goods on or at any time after the completion of delivery.
 - 11.8. Unless otherwise agreed by the Company payment is due on the last day of the month immediately following the month of delivery of the Goods in full and in cleared funds to a bank account nominated in writing by the Company. The time for payment shall be of the essence of the Contract.
 - 11.9. If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under condition 13, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this condition 11.9 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%. The Company reserves the right at any time to demand full or partial payment before proceeding further with an order.
 - 11.10. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
 - 11.11. Should default be made by the Customer in paying any sum due under the Contract, the Company at its option shall be entitled either to suspend supplies until the default is made good or treat such default as a repudiation of the Contract in which case the Customer shall (without prejudice to any right which the Company may have to return the Goods or the payment of any compensation or damages by the Customer) pay the Company's reasonable charges incurred in the course of all preparation of any kind whatsoever made by the Company or in the course of any part performance of the Contract by the Company.
 - 11.12. In addition to any rights which the Company may have by law, the Company shall also have a general lien over all goods in its possession belonging to the Customer or held to the Customer's order or which may have been sold or agreed to be sold to the Customer, whether paid for or not, for any moneys due from the Customer to the Company.
 - 11.13. If any lien (whether general as above or particular), is not satisfied within four (4) weeks after payment of such moneys is due, the Company may give to the Customer at its last known address four (4) weeks' notice drawing attention to the substance of this condition, and on the expiration of such notice the Company may at its absolute discretion sell such Goods as agent for the Customer and apply the proceeds towards the monies due and the expenses of sale, and shall upon accounting to the Customer for the balance remaining, if any, be discharged from all liability whatsoever in respect of the Goods.
- 12. LIMITATION OF LIABILITY**
 - 12.1. The limits and exclusions in this condition reflect the insurance cover the Company has been able to arrange, and the Customer is responsible for making its own arrangements for the insurance of any excess liability.
 - 12.2. References to liability in this condition 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
 - 12.3. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
 - 12.3.1. death or personal injury caused by its negligence;
 - 12.3.2. fraud or fraudulent misrepresentation;
 - 12.3.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979; and
 - 12.3.4. defective products under the Consumer Protection Act 1987.
 - 12.4. Without prejudice to the Company's obligation to replace the Goods or refund the Customer specified in condition 9.5 and subject to condition 12.3, the Company's total liability to the Customer under the Contract shall not exceed the total charges paid and payable by the Customer under the Contract in respect of the Goods, whether or not invoiced to the Customer.
 - 12.5. Generally, the Company is unaware of the use to which its Goods will be put but regardless of any express or implied knowledge of the use to which its Goods will be put all conditions of warranties as to fitness for purpose whether expressed or implied and whether arising by statute, custom of the trade or at common law are excluded to the fullest extent permitted by law.
 - 12.6. Subject to condition 12.3, the following types of loss are wholly excluded:
 - 12.6.1. loss of profits;
 - 12.6.2. damage to plant;
 - 12.6.3. loss of sales or business;
 - 12.6.4. loss of agreements or contracts;
 - 12.6.5. loss of anticipated savings;
 - 12.6.6. loss of use or corruption of software, data or information;
 - 12.6.7. loss of or damage to goodwill; and
 - 12.6.8. indirect or consequential loss.

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12.7. This condition 12 shall survive termination of the Contract.

13. TERMINATION

13.1. Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

13.1.1. the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of being notified in writing to do so;

13.1.2. 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; or

13.1.3. the other party suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business.

13.2. Without limiting its other rights or remedies the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:

13.2.1. the Customer has not paid any sum due after written demand has been made for payment thereof or if the Customer shall fail to provide any letter of credit bill of exchange guarantee or other security required by the Contract;

13.2.2. the Customer shall fail to take delivery of any Goods under the Contract otherwise than in accordance with the Customer's contractual rights; or

13.2.3. the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13.3. Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in condition 13.1.2 to condition 13.1.3 or condition 13.2.3, or the Company 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 the Contract on the due date for payment.

13.4. On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of
a) Goods supplied
b) work-in-progress costs incurred by the Company and its subcontractors for part finished Goods and
c) raw materials purchased by the Company or its subcontractors that cannot be used by the Company to produce goods for other customers, but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt.

13.5. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in

respect of any breach of the Contract which existed at or before the date of termination.

13.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

14. FORCE MAJEURE

If performance of the Contract by the Company is prevented delayed or interrupted by a Force Majeure Event the Company shall not be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for six (6) weeks or more the Company may terminate the Contract by written notice to the Customer. In the event of the Company lawfully suspending delivery under this condition it shall be entitled as a condition of resuming delivery to impose such conditions as to payment and or as to the provision of security for payment as it may reasonably require.

15. GENERAL

15.1. Assignment and other dealings.

The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

15.2. Entire agreement.

The Contract constitutes the entire agreement between the parties. 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 shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

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

15.4. Waiver.

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

15.5. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this condition 15.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.6. Notices.

15.6.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or

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other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by email to the email address specified by each party in writing from time to time.

- 15.6.2. Any notice shall be deemed to have been received if delivered by hand, at the time the notice is left at the proper address, if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 15.6.3. This condition 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.
- 15.7. **Third party rights.**
The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 15.8. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 15.9. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation. However, the Company shall also have the right to elect that any dispute be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one (1) or more arbitrators appointed in accordance with such Rules. If the Company exercises its right to elect arbitration as a means of resolving the dispute, the dispute shall be resolved solely pursuant to such arbitration proceedings and the jurisdiction of the courts shall be limited to enforcing the arbitral award, which shall be final and binding on the parties. The right and remedies set forth herein are exclusive and in lieu of any other rights or remedies at law, excluding those relating to choice or conflicts of law.