

Qlar Pneumatic Conveying UK Limited

Terms and Conditions of Sale

1.0 Definitions and Interpretation

1.1 The following words or phrases have the following meanings in these Terms & Conditions:

"Company" means Qlar Pneumatic Conveying UK Limited and any successor in title.

"Company Materials" has the meaning set out in clause 3.8.7.

"Contract" means the contract between the Company and the Customer for the sale and purchase of the Equipment and/or the provision of Services in accordance with these Terms & Conditions and the Special Conditions.

"Customer" means the person or firm who purchases the Equipment and/or Services from the Company.

"Deliverables" means any deliverables set out in the Order Acknowledgment produced by the Company for the Customer.

"Equipment" means any equipment, machinery accessories, spare parts, materials or plant supplied by the Company under the Contract.

"Final Date" means 30 days from the date of the invoice unless otherwise set out in the Special Conditions.

"Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or their material worsening thereof or similar events, natural disasters or extreme adverse weather conditions, or default of the Company's suppliers or subcontractors.

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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 right, topography rights, moral 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.

"Order" means the Customer's order for Equipment and/or Services.

"Order Acknowledgment" means the Company's acknowledgment document setting out the terms and conditions upon which the Company will supply the Equipment and/or provide the Services to the Customer.

"Purchase Price" means the price or prices stated in the Special Conditions or such other sum as may become payable under the Contract.

"Services" means any services, including the Deliverables (if any), provided by the Company to the Customer under the Contract.

"Site" means such location as is specified in the Special Conditions for receipt of the Equipment by the Customer and/or the carrying out of the Services.

"Special Conditions" means any special conditions in relation to the Equipment or the provision of the Services details of which are shown in the Order Acknowledgment.

"Specification" means any specification for the Equipment provided by the Company, including any related plans and drawings, and/or the description or specification of the Services provided as set out in the Order Acknowledgment.

"Terms & Conditions" means the terms and conditions set out in this document as amended from time to time.

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"Variation(s)" means any services and/or equipment not included within the original Works and/or Equipment under the Contract or any variation or change to the Works and/or Equipment which the Company agrees to carry out or supply in accordance with the terms of the Contract.

- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a party includes its personal representatives, successors or permitted assigns. 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. 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. A reference to writing or written includes faxes and e-mails unless the latter have been expressly excluded.

2.0 Formation of Contract

- 2.1 These Terms & 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, practise or course of dealing.
- 2.2 Save as to Equipment and/or Services made available via Qlar Shop as defined under clause 2.5, any quotation for Equipment and/or Services given by the Company shall not constitute an offer. A quotation is only valid for a period of 30 days from its date of issue.
- 2.3 Any Order constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with these Terms & Conditions. The Customer is responsible for ensuring that the Special Conditions, any applicable Specification and the terms of the Order Acknowledgment issued by the Company are complete and accurate.
- 2.4 Any Order shall only be deemed to be accepted when the Company issues the Order Acknowledgment at which point the Contract shall come into existence.
- 2.5 The Equipment and/or Services offered in our online shop "**Qlar Shop**" (shop qlar.com) are to be considered as offers without obligation. By clicking on the button "Order with obligation to pay", the Customer submits a binding offer to purchase the Equipment and/or Services in the shopping basket and agrees to the validity of these Terms and Conditions of Sale. The order confirmation sent automatically by the Company after receipt of the Customer's order confirms to the Customer the content and receipt of his order but does not constitute acceptance of the Customer's offer. A Contract with the Company is only concluded through the Company's declaration of acceptance, which is sent with a separate e-mail (Order Acknowledgement), at the latest, however, through the dispatch of the Equipment ordered from us. We will declare acceptance either by sending an order confirmation or by dispatching the Equipment within seven working days of receipt of the Customer's order. If we do not issue a declaration of acceptance within this period, the Customer's order has not been accepted by the Company.
- 2.6 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 Company which is not set out in the Contract.
- 2.7 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 Equipment and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.8 The Customer is responsible for complying with any legislation or regulations governing the import / export of the Equipment and for the payment of any duties thereon. The Customer is further responsible for obtaining, at its own cost, such import and/or export licences and other consents in relation to the Equipment as are required from time to time and, if required by the Company, the Customer shall make those licences and consents available to the Company prior to the relevant delivery.
- 2.9 These Terms & Conditions together with the Special Conditions shall have precedence over all other documents forming part of the Contract.

3.0 Supply of Equipment and/or Services

- 3.1 The Equipment is described in the Company's brochures as modified by the Specification.

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- 3.2** To the extent that the Equipment shall be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify the Company 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 Company in connection with 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. This clause 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 requirements and will notify the Customer in any such event.
- 3.4** The Equipment and/or the Services shall be supplied to the Customer in accordance with the Specification in all material respects.
- 3.5** The Company shall use reasonable endeavours to meet any delivery and/or performance dates specified in the Contract but any such dates shall be estimates only and time shall not be of the essence for delivery of the Equipment and/or performance of the Services.
- 3.6** The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 3.7** The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.8** In relation to the supply of the Equipment and/or provision of the Services, the Customer shall at its own expense and risk:

 - 3.8.1** ensure that the terms of the Contract and any information it provides in the Specification are complete and accurate;
 - 3.8.2** co-operate with the Company in all matters relating to the supply of the Equipment and/or provision of the Services;
 - 3.8.3** carry out the offloading of the Equipment at the Site and provide safe covered storage for the same;
 - 3.8.4** provide the Company, its employees, agents, consultants and subcontractors, with all such assistance, access and information as the Company may reasonably require including without limitation materials and power required for tests, commissioning and start of operations, access to existing plant and equipment and reasonable facilities for the provision of the Services;
 - 3.8.5** prepare the Site for the supply of the Equipment and/or provision of the Services, unless otherwise set out in the Special Conditions;
 - 3.8.6** obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Equipment shall be supplied and/or the Services be provided;
 - 3.8.7** keep and maintain all materials, equipment, tools, documents and other property of the Company ("**Company Materials**") at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's instructions or authorisation; and
 - 3.8.8** provide adequate insurance to cover its liabilities under the Contract, details of which, including a copy of the policy and receipt for payment of the last premium shall be provided to the Company on request.
- 3.9** If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

- 3.9.1** the Company shall without limiting its other rights or remedies have the right to suspend delivery of the Equipment / performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delay's the Company's performance of any of its obligations;
- 3.9.2** the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 3.9.2;
- 3.9.3** the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default; and
- 3.9.4** clause 4.4 shall apply accordingly.

4.0 Delivery

- 4.1** The Company shall ensure that:
 - 4.1.1** each delivery of the Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Company reference numbers, the type and quantity of the Equipment (including the code number of the Equipment, where applicable) as well as special storage instructions (if any); and
 - 4.1.2** the Company shall be entitled to advise the Customer to return any packaging materials to the Company. In this case, the Customer shall make any such packaging materials available for collection at such times as the Company shall reasonably request. Returns of packaging materials shall be at the Company's expense.
- 4.2** The Company shall deliver the Equipment to the Site per the agreed INCOTERM 2020 and on the day as set out in the Order Acknowledgment or such date as agreed between the parties ("**Delivery Date**"). Delivery of the Equipment shall be completed as defined under the agreed INCOTERM 2020. For the avoidance of doubt, the Company shall not be responsible for and has no liability in relation to the unloading of the Equipment. Clause 3.8.3 shall apply.
- 4.3** The Company shall not be liable for any delay in or failure of delivery of the Equipment that is caused by the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment. If the Company otherwise fails to deliver the Equipment, its liability shall be limited to the Purchase Price.
- 4.4** If the Customer fails to accept delivery of the Equipment on the Delivery Date, 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:
 - 4.4.1** Delivery of the Equipment shall be deemed to have been completed at 0.01 of the day after the Delivery Date; and
 - 4.4.2** the Company shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.5** If 1 month after the Delivery Date the Customer has not accepted delivery of the Equipment, the Company may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.
- 4.6** The Customer shall not be entitled to reject the Equipment if the Company delivers up to and including 5% more or less than the quantity of Equipment ordered, but a pro rata adjustment shall be made to the associated invoice on receipt of notice from the Customer that the wrong quantity of Equipment was delivered.
- 4.7** The Company may deliver the Equipment by instalments, which shall be invoiced and paid for separately.

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- 4.8** After delivery and if the Company is responsible for installation and/or commissioning of the Equipment, the Company shall install and/or commission the Equipment and subject the Equipment to its standard installation and/or commissioning acceptance tests to ensure that the Equipment conforms to Contract in all material respects. If the Equipment passes such tests, the Company shall issue an acceptance certificate to that effect to the Customer.
- 4.9** The Customer shall be deemed to have accepted the Equipment at the earliest of either:
- 4.9.1** the Customer signing the acceptance certificate issued by the Company pursuant to clause 4.8; or
 - 4.9.2** the Customer commencing commercial production using the Equipment; or
 - 4.9.3** if the Customer and the Company have agreed that the Customer (itself or through a third party) will be responsible for installing the Equipment, at the time the Equipment has been delivered.

5.0 Title and Risk

- 5.1** The risk in the Equipment shall pass to the Customer on completion of delivery in accordance with clause 4.2.
- 5.2** Title to the Equipment shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:
- 5.2.1** the Equipment; and
 - 5.2.2** any other goods or services (including the Services) that the Company has supplied to the Customer in respect of which payment has become due.
- 5.3** Until title to the Equipment has passed to the Customer, the Customer shall:
- 5.3.1** hold the Equipment on a fiduciary basis as the Company's bailee;
 - 5.3.2** store the Equipment separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
 - 5.3.3** not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
 - 5.3.4** maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery;
 - 5.3.5** notify the Company immediately if it becomes subject to any of the events listed in clause 11.1.2 to 11.1.12; and
 - 5.3.6** give the Company such information relating to the Equipment as the Company may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 5.4** If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause 11.1.2 to 11.1.12, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Equipment has not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Equipment and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover it.

6.0 Warranties

- 6.1** The Company warrants that on delivery and for a period of 12 months from the date of delivery (the "**Warranty Period**"), the Equipment shall:
- 6.1.1** conform in all material respects with their description and any applicable specification (including the Specification);
 - 6.1.2** be free from material defects in design, material and workmanship;
 - 6.1.3** be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

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- 6.1.4** be fit for any purpose as expressly defined by the Company.
- 6.2** Unless otherwise agreed in the Special Conditions, where the Company undertakes the commissioning of the Equipment for the Customer in accordance with clause 4.8, the Company will provide a warranty of 12 months from completion of commissioning or 15 months from the date of delivery whichever the earlier.
- 6.3** Subject to clause 6.4, if:
- 6.3.1** the Customer gives notice in writing to the Company during the Warranty Period within a reasonable time of discovery that some or all of the Equipment does not comply with the warranty set out in clauses 6.1 or 6.2,
 - 6.3.2** the Company is given a reasonable opportunity of examining such Equipment; and
 - 6.3.3** the Customer (if asked to do so by the Company) returns such Equipment to the Company's place of business at the Customer's cost, the Company shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full.
- 6.4** The Company shall not be liable for the failure of the Equipment to comply with the warranty set out in clauses 6.1 and/or 6.2 in any of the following events:
- 6.4.1** the Customer makes further use of such Equipment after giving notice in accordance with clause 6.3;
 - 6.4.2** the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or good trade practice regarding the same;
 - 6.4.3** the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;
 - 6.4.4** the Customer alters or repairs such Equipment without the written consent of the Company;
 - 6.4.5** the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions. Fair wear and tear shall not be deemed a defect; or
 - 6.4.6** the Equipment differs from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.5** Except as provided in this clause 6.0, the Company shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranties set out in clauses 6.1 or 6.2.
- 6.6** 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 Contract.
- 6.7** These Terms & Conditions shall apply to any repaired or replacement Equipment supplied by the Company.

7.0 Variations and Valuation of Variations

- 7.1** The Customer is entitled to invite the Company to undertake Variations to the Equipment and/or Services. The Company's charges in respect of such Variations shall be agreed in writing between the parties prior to the Company having any obligation to undertake such Variations. The Company may refuse in its absolute discretion to agree to undertake any Variation(s) to the Equipment and/or the Services.
- 7.2** On receipt of instructions from the Customer in respect of any proposed Variation, the cost thereof shall be advised by the Company to the Customer. The Customer shall within 7 days of being advised of such costs decide whether or not to proceed with such Variation and shall advise the Company of its decision in writing.
- 7.3** A Variation can also arise by any default of the Customer resulting in the Company incurring loss, expense or costs in which instance Customer approval as set out above shall not apply.
- 7.4** The amount payable in respect of any Variation shall be added to or deducted from the Purchase Price (as appropriate).
- 7.5** Except as set out in these Terms & Conditions, any Variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Company.

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8.0 Purchase Price and Payment

- 8.1** The Purchase Price is as set out in the Company's Special Conditions.
- 8.2** Unless the contrary is expressly stated in the Special Conditions, the Purchase Price excludes:
- 8.2.1** all value added tax (VAT) and all other taxes, charges or levies. The Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or the provision of the Services;
 - 8.2.2** all collection expenses incurred by the Company in connection with the remittance of payment by the Customer;
 - 8.2.3** Variations undertaken by the Company at the request of the Customer;
 - 8.2.4** works, costs and/or Variations required as a result of the failure of the Customer to fulfil its obligations under the Contract;
 - 8.2.5** costs or losses arising from any matter beyond the Company's immediate control or any Force Majeure Event which prevents or interrupts the carrying out of the Contract;
 - 8.2.6** costs of complying with any change in law in relation to the Equipment or completion of the Services after the date of the Contract; in respect of which the Company shall be entitled to charge the Customer for all additional costs so incurred.
- 8.3** Any amounts to be paid by the Customer under the Contract in addition to the Purchase Price will be added to the Purchase Price. Such amounts shall be based on the cost of Equipment, materials, labour, sub-contracts, transport duties, taxes and other expenses prevailing at the time such works are carried out together with a fair and reasonable allowance for the Company's overheads and profit.
- 8.4** The Company shall be entitled to invoice the Customer in instalments upon reaching of certain milestones such as Order Acknowledgment and/or procurement of key materials and/or completion of delivery of the Equipment and/or completion of the Services or as otherwise set out in the Special Conditions.
- 8.5** Payment will fall due to the Company on the Final Date.
- 8.6** Failure to pay any instalment or interim invoice on the Final Date shall render the whole of the Purchase Price payable forthwith. All collection expenses (including legal expenses) incurred by the Company in connection with any failure of the Customer to make payment in accordance with these Terms & Conditions shall be payable by the Customer in addition to the Purchase Price. Neither destruction, loss or damage of the Equipment and/or the Services or any part thereof, nor delay in delivery, erection or the commencement of the Services or the Customer's operations shall excuse payment by the Customer in accordance with these Terms & Conditions.
- 8.7** If payment is not made by the Final Date, the Customer shall pay interest on any such payment at the rate of 7% per annum above the base lending rate of the Bank of England (subject always to a minimum interest rate of 8% per annum) from the Final Date to the date of payment, both before and after judgment.
- 8.8** Where any sum due under the Contract is not paid in full within 7 days of the Final Date, the Company shall be entitled (without prejudice to any other right or remedy) to suspend performance of its obligations under the Contract after the expiry of not less than 7 days' notice of intention to suspend performance stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance shall cease when the Customer makes payment in full of the amount previously outstanding and due together with any additional costs which have arisen as a result of suspension notified to the Customer by the Company.
- 8.9** The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payments of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

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9.0 Design and Intellectual Property Rights

- 9.1** The Company's responsibility for design is limited to that stated in the Order Acknowledgment. The Customer warrants that carrying out the Services to any design of the Customer will not infringe the Intellectual Property Rights of any third party and shall indemnify the Company for any infringement of any Intellectual Property Rights of any third party.
- 9.2** All Intellectual Property Rights in or arising out of or in connection with the Equipment and/or the Services shall be owned by the Company.
- 9.3** The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to licence such rights to the Customer. Unless otherwise agreed between the parties, the Customer shall bear the costs for any such licence(s).
- 9.4** All Company Materials are the exclusive property of the Company.

10.0 Limitation of Liability and Indemnity

- 10.1** Nothing in these Terms and Conditions shall limit or exclude the Company's liability for:
- 10.1.1** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 10.1.2** fraud or fraudulent misrepresentation;
 - 10.1.3** breach of the terms implied by the Sale of Goods Act 1979 (excluding sections defined under clause 6.6) and/or the Supply of Goods and Services Act 1982;
 - 10.1.4** defective products under the Consumer Protection Act 1987; or
 - 10.1.5** any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 10.2** Subject to clause 10.1:
- 10.2.1** the Company shall under no circumstances whatever be liable to the Customer for any delay in performing, or any failure to perform any of the Company's obligations in relation to the Equipment and/or the Services to the extent that it is in whole or in part due to circumstances over which the Company has no immediate control;
 - 10.2.2** the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
 - 10.2.2.1** any business interruption, loss of business, loss of contracts, loss of opportunity, loss of use and/or loss of production; or
 - 10.2.2.2** any loss of profit or any indirect or consequential loss arising under or in connection with the Contract; and
 - 10.2.3** the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the Purchase Price.
- 10.3** The Customer shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer.
- 10.4** The Customer shall indemnify the Company against all claims, demands, proceedings, losses, damages, legal costs and expenses made against or incurred by the Company by reason of any breach by the Customer of these Terms & Conditions or by reason of any act, neglect or default on the part of the Customer or its agents.
- 10.5** Except as set out in these Terms & Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.6** This clause 10.0 shall survive termination of the Contract.

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11.0 Termination

- 11.1** Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 11.1.1** the other party commits a material breach of the Contract (and if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;
 - 11.1.2** 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 11.1.3** the other party commences 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 its creditors other than (where a company) 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;
 - 11.1.4** 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 that other party (being a company) 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;
 - 11.1.5** the other party (being an individual) is the subject of a bankruptcy petition or order;
 - 11.1.6** 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;
 - 11.1.7** 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 (being a company);
 - 11.1.8** a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 11.1.9** a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 11.1.10** an 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 11.1.2 to clause 11.1.9 (inclusive);
 - 11.1.11** the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - 11.1.12** the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation.
- 11.2** Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 11.3** Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 3 months' written notice. In the event of termination by the Customer, the Company shall be entitled to claim any and all costs (including but not limited to loss of profits) incurred in relation to such termination including but not limited to costs that the Company has already incurred in manufacturing or ordering the Equipment or any Deliverables or parts thereof which cannot otherwise be used. The Company shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer in this respect.

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11.4 Without limiting its other rights or remedies, the Company shall have the right to suspend delivery of the Equipment and/or provision of the Services 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 clause 11.1.2 to clause 11.1.12, or the Company reasonably believes that the Customer is about to become subject to any of them.

12.0 Consequences of Termination

12.1 On termination of the Contract for any reason:

12.1.1 the Customer shall immediately pay to the Company all of the Company's outstanding invoices and interest and, in respect of Equipment and/or Services supplied and the price of any work done upon the Equipment and/or Services up to the date of termination but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;

12.1.2 the Customer shall return all of the Company Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

12.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

12.1.4 clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

13.0 Confidentiality

13.1 A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been 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 or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 13.0 shall survive termination of the Contract.

13.2 All information including without limitation documents, drawings and plans supplied by the Company shall remain the property of the Company and must not be disclosed to any third party, without prior written authority from the Company.

13.3 In the event of the Company providing or making available any such information to the Customer, the Customer hereby undertakes to hold all documents, drawings, plans and any other information supplied by the Company to the Company's order and to return the same to the Company immediately on request.

14.0 Force Majeure

14.1 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.

14.2 If the Force Majeure Event prevents the Company from providing any of the Services for more than 12 weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

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15.0 Anti-Bribery Compliance

The Customer shall comply with all applicable laws, regulations, codes and sanctions relating to antibribery and anti-corruption including but not limited to the Bribery Act 2010. The Customer shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK. The Customer shall have and shall maintain in place its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, and shall enforce them where appropriate.

16.0 Trade Compliance

- 16.1 The performance of contractual obligations (providing goods, incl. software and technology and providing services) is subject to the condition that this does not conflict with any national, European, U.S. or supranational (United Nations/World Trade Organisation) foreign trade laws, such as export control regulations, embargos, sanctions, customs regulations or other restrictions.
- 16.2 Customer acknowledges that the Equipment and/or Services and/or Deliverables may include hardware and software that are subject to customs and export control laws and regulations of the United States (wherever they are located), and of the country in which the goods are manufactured and/or received.
- 16.3 Customer undertakes to comply with all applicable national, European or supranational (UN/WTO) foreign trade laws such as export control regulations or U.S. re-export control regulations, specifically when forwarding goods (incl. software, technology and the related documentation) or services to any third party.
- 16.4 If required licenses are not granted or contractual services cannot be approved by competent authorities, the Company reserves the right to rescind the Contract. Damages of any kind, particularly due to delay or non-performance, or any other rights or remedies of the Customer in connection with this section are excluded.
- 16.5 Customer agrees to defend, indemnify and hold the Company harmless for any fine, penalty, claim, suit, demand, liability, cause of action, damage or cost (including legal fees) for any actual or alleged violation of foreign trade laws arising from the sale and/or delivery of Equipment and Deliverables incl. software and technology or from the performance of Services.

General 17.1 Assignment and Sub-Contracting

- 17.1.1 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 17.1.2 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 Notices

- 17.2.1 Any notice required to be given to a party under or in connection with this Contract shall be in writing and addressed to such party at its registered company address or such other address as may be stated in the Order Acknowledgment for such party and shall be deemed to have been duly received either:
 - i. if delivered personally, when left at the address referred to above;
 - ii. if sent by fax, on the next Business Day after transmission;
 - iii. if sent by pre-paid first class post or recorded delivery, on the second Business Day after posting; or
 - iv. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

17.2.2 This clause 16.2 shall not apply to the service of any proceedings or other documents in any legal action. For the purpose of this clause, notice given under this Contract shall not be validly served if sent by email. However, for the avoidance of doubt, other communication between the parties that is not deemed a notice pursuant to these Terms & Conditions may be sent by email.

17.3 Waiver

17.3.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17.3.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

17.4 Severance

17.4.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

17.4.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17.5 Third Party Rights

A person who is not a party to the Contract shall not have any rights under or in connection with it.

17.6 Variation

Except as set out in these Terms & Conditions, any Variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Company.

17.7 Data Protection

17.7.1 In this Clause 17.7, the following definitions shall apply:

Data Protection Legislation: all applicable data protection and privacy legislation, regulations and guidance including the Data Protection Act 2018 and the General Data Protection Regulation (EU (2016/679)) (GDPR) (each as amended or re-enacted from time to time and including any replacement or subordinate legislation) and industry guidelines and codes of practice in force from time to time relating to the protection and transfer of personal data. Definitions in these terms shall, so far as the context permits and unless otherwise stated, the meanings given to them in the Data Protection Legislation. **Personal Data:** personal data (as defined in the Data Protection Legislation) processed by the Customer on behalf of the Company pursuant to this Contract.

17.7.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 17.7 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

17.7.3 The Customer acknowledges that, in relation to its obligations under this Contract, it shall act as a data processor on behalf of the Company in relation to any Personal Data. Processing of Personal Data by the Data Processor under this Contract shall be restricted to the duration of the term of the Contract and, in respect of its subject-matter, nature and purpose, to such processing activities and purposes as the Data Processor is reasonably required to undertake in connection with its performance under this Contract. The types of Personal Data and categories of data subject shall be restricted to such data concerning such data subjects as the Data Controller provides to the Data Processor in connection with parties' performance under this Contract. To the extent that the Customer processes any Personal Data pursuant to this Contract, the Customer warrants that it shall:

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- i. procure that its directors, officers, and employees shall, comply with all applicable obligations and requirements under the Data Protection Legislation;
 - ii. not transfer or disclose Personal Data to any third party without the Company's prior written consent;
 - iii. keep a record of any processing of Personal Data it carries out on behalf of the Company in accordance with the requirements of and to demonstrate compliance with the Data Protection Legislation and shall co-operate with the Company in any audits and inspections to monitor such compliance;
 - iv. promptly comply with any reasonable request from the Company requiring the Customer to amend, transfer or delete the Personal Data;
 - v. put in place and maintain appropriate technical and organisational measures to protect against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - vi. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - vii. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Company has been obtained
- 17.7.4** The Customer will not use a third party processor (Sub-Processor) without prior specific or general written authorisation from the Company.
- 17.7.5** If the Company gives prior specific or general written authorisation for the Customer to use a Sub-Processor, the following will apply:
- i. the Customer must notify the Company of any changes to Sub-Processors made under prior general written authorisation and must allow the Company a reasonable time to object to those changes;
 - ii. the Customer must impose such contract terms on the Sub-Processor as are required by the Data Protection Legislation, especially but not exclusively, those contract terms required under Article 28.3 of the GDPR; and
 - iii. the Customer will remain fully liable to the Company for any acts or omissions of the sub-Processor.
- 17.7.6** The Customer will process Personal Data only in accordance with the written instructions of Company unless otherwise required to do so by law. Where the Customer intends to rely on a requirement of law as the basis for processing the Personal Data, the Customer will promptly notify the Company of this before performing the Processing required unless the requirement of law relied upon prohibits the Customer from so notifying the Company.
- 17.7.7** The Customer shall:
- i. retain all information required to demonstrate that the Customer and the Company have met their obligations under the Data Protection Legislation;
 - ii. submit and contribute to audits and inspections carried out by the Company or a third-party appointed by the Company to carry out such audits or inspections. the Company will endeavour to provide reasonable written notice of the date of inspections or audits;
 - iii. inform the Company immediately if the Customer believes or suspects that it has been given an instruction that does not comply with the Data Protection Legislation; and
 - iv. notify the Company immediately if the Customer becomes aware of or reasonably suspects a personal data breach.
- 17.7.8** On termination or expiry of this Contract, the Customer shall, at the choice of the Company, delete or return to the Company all Personal Data and copies thereof it has within its power, ownership or control, and the Customer shall ensure that any such return or deletion is carried out securely and in accordance with current best practice.

17.7.9 The Customer shall not knowingly or negligently do or omit to do anything which places the Company in breach of its obligations under the Data Protection Legislation. The Supplier shall indemnify the Company, to the fullest extent permitted by law, against any claim, loss, damage, expense or fine arising as a result of a breach by the Customer of this clause 17.7, or otherwise arising under the Data Protection Legislation caused by any action or omission the Customer or its personnel, agents or other authorised individuals.

17.8 Governing Law and Jurisdiction

The Contract shall be governed by, and construed in accordance with, English law under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods. At the Company's sole discretion and option, any dispute or claim arising out of or in connection with the Contract or its subject matter or formation or validity (including non-contractual disputes or claims) shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by three arbitrators (one appointed by Company's insurer) without recourse to the ordinary courts of law. The place of arbitration shall be England. The language of arbitration shall be English. In the event of arbitration, the arbitrators shall assess the amount of the costs to be borne by each party. Where applicable, the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.