

**[Essentra company name] (the "Supplier")**

**Essentra U.S.**

**Terms and Conditions of Sale**

**Date of last update: February 2016**

**1. GENERAL**

**1.1** These Terms and Conditions shall apply to the sale and supply of Products by the Supplier to the Customer.

**1.2** The contract governing the sale and supply of Products by the Supplier to the Customer shall in each instance consist of (i) these Terms and Conditions, (ii) the Sales Sheet (if applicable), and (iii) the Confirmation (if applicable), which shall be to the express exclusion of any other terms and conditions (including any Customer terms and conditions) referred to in any negotiations, the Confirmation, or course of dealing between the parties.

**1.3** The Supplier reserves the right to modify these Terms and Conditions at any time to reflect changes in how the Supplier accepts payment from the Customer, changes in relevant laws and regulatory requirements and any other circumstances which are reasonable in the Supplier's opinion. If the Supplier modifies these Terms and Conditions, the Supplier will post the modification on its website and/or notify the Customer of the modified Terms and Conditions. The Supplier will also update the "last updated" date at the top of these Terms and Conditions. Every time the Customer orders Products from the Supplier, the Terms and Conditions published on the Supplier's website at that time or previously notified by the Supplier to the Customer will apply to the applicable Contract.

**2. DEFINITIONS AND INTERPRETATION**

**2.1** In these Terms and Conditions:

- |                          |  |
|--------------------------|--|
| <b>"Confirmation"</b>    | has the meaning given in clause 3.4.2;   |
| <b>"Contract"</b>        | means each individual contract formed pursuant to clause 3.4 and which consists of those documents specified in clause 1.2;  |
| <b>"Customer"</b>        | the person purchasing Products pursuant to orders placed in accordance with clause 3;  |
| <b>"Delivery"</b>        | means the delivery of the Products in accordance with clause 8.1 or 8.2 (as applicable);   |
| <b>"Export Controls"</b> | means all laws, regulations, codes and controls on the import and export of goods and services in and out of a country or relevant administrative area or applied by reason of the country of origin of the Products or part of them, including the United States' Export Administration Regulations, the International Traffic in Arms Regulations, the United Kingdom's and European Union's military and dual-use lists |

and any similar list each as amended, supplemented or substituted from time to time;

<b>"Group"</b>	means in relation to a company, that company and any subsidiary and any holding company of that company and any subsidiary of any such holding company in each case from time to time;
<b>"Intellectual Property Rights"</b>	means patents, utility models, rights in invention, copyright and neighbouring and related rights, database rights, moral rights, design rights, trade marks, trade names and get-up, goodwill, know-how, confidential information and other intellectual property rights, whether registered or unregistered and including all applications for the grant of the foregoing and all rights or forms of protection having similar or equivalent effect to any of the foregoing which may subsist anywhere in the world;
<b>"Materials"</b>	has the meaning given in clause 4.1;
<b>"Permitted Method"</b>	means email, telephone, electronic data interchange or any other method of communication between the parties which is permitted by the Supplier from time to time;
<b>"Products"</b>	means the products made available for sale (and, if applicable sold) by the Supplier from time to time and (to the extent applicable) as set out in the Sales Sheet and/or Confirmation;
<b>"Restricted Party"</b>	means a person or entity that is listed on, owned or controlled by, or acting on behalf of, a person listed on a Sanctions List, or otherwise a subject of Sanctions;
<b>"Sales Sheet"</b>	means the Supplier's pro forma document which can be used to detail certain commercial terms of the Contract which may be formed when the Supplier accepts an order placed by the Customer;
<b>"Sample"</b>	means a sample of the Product provided by the Supplier to the Customer;
<b>"Sanctions Authority"</b>	means (a) the Security Council of the United Nations; (b) the Department of State, the Department of the Treasury and the Office of Foreign Assets Control of the United States of America; (c) the Council and the Commission of the European Union; (d) Her Majesty's Treasury of the United Kingdom; and (e) any other relevant governments, departments, authorities, institutions or agencies;
<b>"Sanctions List"</b>	means the Specially Designated Nationals and Blocked Persons list maintained by the United States' Office of Foreign Assets Control, the Consolidated List of Financial Sanctions Targets maintained by Her Majesty's Treasury, or any similar list maintained by or public announcement of a Sanctions

designation made by, a Sanctions Authority, each as amended, supplemented or substituted from time to time;

- "Sanctions"** means any trade, economic or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by a Sanctions Authority;
- "Specification"** means the specification of the relevant Product which may be applicable pursuant to clause 5.3;
- "Supplier"** means the Essentra group company named at the beginning of these Terms and Conditions;
- "Terms and Conditions"** means these terms and conditions as updated and varied from time to time; and
- "Working Days"** means any day other than a Saturday, Sunday or public holiday in the country in which the Supplier is located.

- 2.2** In these Terms and Conditions: (i) a **"party"** means the Supplier or the Customer (as applicable) and **"parties"** means both of them, (ii) headings are for convenience only and shall not affect its interpretation, (iii) references to a **"person"** include any individual, company, corporation, firm, partnership, association, organisation, institution, trust or agency, whether or not having a separate legal personality, (iv) words in the singular shall include the plural and vice versa as the context admits or requires, (v) any reference to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced, (vi) the word **"including"** shall, unless the context otherwise requires, mean **"including without limitation"**, and (vii) **"in writing"** includes by email or other written Permitted Method.

### **3. ORDER AND CONFIRMATION**

- 3.1** The Supplier shall supply Products ordered by the Customer from time to time in accordance with these Terms and Conditions.
- 3.2** Each order placed by the Customer shall be deemed to be a separate offer to purchase Products under these Terms and Conditions which the Supplier shall be free to accept or decline at its absolute discretion.
- 3.3** Orders may be placed by the Customer in one of three ways:
- 3.3.1** by completing a Sales Sheet which includes specific details of the Products required by the Customer (and which does not anticipate or require any subsequent call-off or other communication) and which is signed by both the Customer and the Supplier;
  - 3.3.2** by placing an order from time to time by a Permitted Method, where the order is governed by (and is made under) a previously agreed Sales Sheet; or
  - 3.3.3** by placing an order from time to time by a Permitted Method, but where a Sales Sheet has not been completed or agreed.

- 3.4** An order placed in the manner described in:
- 3.4.1** clause 3.3.1 shall be deemed accepted by the Supplier on execution by both parties of the Sales Sheet; and
  - 3.4.2** clauses 3.3.2 or 3.3.3 shall be deemed accepted by the Supplier upon the sending by the Supplier of an order acknowledgement and confirmation by a written Permitted Method and which shall confirm the commercial terms of the order (a "**Confirmation**"),

and in each case a separate contract will be formed upon such acceptance, save that there shall be deemed to be no acceptance where the price of the Product has been incorrectly quoted or stated by the Supplier in a Sales Sheet or Confirmation.

- 3.5** The Customer shall act in good faith and with accuracy if it forecasts its requirements for Products. Unless otherwise set out in a Sales Sheet, a product forecast shall be binding on the Customer and shall constitute an order for Products in accordance with clause 3.3.
- 3.6** Each Contract shall consist of these Terms and Conditions and (to the extent applicable) the Sales Sheet and the Confirmation, to the exclusion of any terms and conditions the Customer may seek to impose.
- 3.7** The Supplier reserves the right to decline to accept or to cancel any order for Products or to impose reasonable conditions prior to accepting any order (including the prior receipt of a letter of credit or cleared funds from the Customer) including where the Supplier considers it reasonably necessary for security or fraud prevention purposes or to comply with any applicable laws or regulations in the country of sale, distribution or use.
- 3.8** All orders placed by the Customer via the Supplier's website shall be subject to the terms and conditions specified on that website.
- 3.9** If a price quotation is provided by the Supplier in respect of any Products, the quotation shall remain valid for 30 days from the date it is given (unless otherwise specified by the Supplier) but shall not bind the Supplier until the applicable order is accepted by the Supplier in accordance with clause 3.4.
- 3.10** Once an order has been accepted by the Supplier it cannot be cancelled, varied or suspended by the Customer without the written agreement of the Supplier.
- 3.11** In the event of any conflict between the following, the order of precedent between them shall be as follows: (i) the Confirmation, (ii) the Sales Sheet, and (iii) these Terms and Conditions.

#### **4. DESCRIPTIONS, SAMPLES AND LITERATURE**

- 4.1** Unless otherwise confirmed by the Supplier in writing, nothing in any materials produced by or on behalf of the Supplier which includes images and/or descriptions of the Products (including website content, CAD files, technical drawings, product measurements and specifications, catalogue content or any other Product-specific imagery and information) ("**Materials**") is to be considered a representation of the source of origin, manufacturer or production of Products or any part of them.

**4.2** Subject to clause 11.1 all information contained in the Materials are published for the sole purpose of giving the Customer an approximate idea of the Products described in them and will not be relied on by the Customer or form part of the Contract except as otherwise expressly provided in the Sales Sheet and/or the Confirmation.

**4.3** Any typographical, clerical or other manifestly obvious error or omission in any quote, price list, Confirmation, label, packaging, invoice or other document or information issued by the Supplier may be corrected by the Supplier, without liability to the Customer, at any time either by correcting any such matter in public by publishing the correction on the Supplier's website or by notifying the Customer in writing and such correction shall be immediately binding upon the Customer.

**4.4** Except as otherwise required by law, a Contract shall not be (i) a sale by Sample, even if Samples have been provided to the Customer, unless specified otherwise in the Sales Sheet or otherwise agreed and specified in the Confirmation, or (ii) a sale by description, even if a description has been provided.

## **5. FITNESS FOR PURPOSE AND SPECIFICATIONS**

**5.1** The Customer will undertake appropriate tests to ensure that the Products are fit for all of the Customer's purposes. Subject to clause 5.2, the Customer expressly acknowledges that, irrespective of any guidance provided to it by the Supplier, in determining whether the Product will be fit for all its purposes, it is not relying on (i) the Supplier's skill and judgement, or (ii) any Materials which are provided or made accessible by the Supplier to the Customer.

**5.2** If the Customer wishes to rely on the Supplier's skill and judgement in relation to a Product being fit for a particular purpose then prior to placing an order the Customer must expressly advise the Supplier in writing of the particular purpose and that it wishes to rely on the Supplier's confirmation of fitness for purpose rather than conduct its own testing. The Supplier shall advise the Customer of any additional charges which will apply if such confirmation is given. The Customer shall only be entitled to rely on the Product being fit for a particular purpose if the Customer has provided all the information which the Supplier would need to undertake the requisite testing and the Supplier has expressly confirmed in the Sales Sheet and/or the Confirmation that the Product can fulfil a particular purpose.

**5.3** A Specification in relation to a Product shall only take effect and form part of a Contract where specified in the Sales Sheet and/or the Confirmation (and in each case this may be facilitated by way of a cross-reference to a pre-agreed specification document). The parties may agree a process for producing and agreeing a Specification, which shall be set out in the Sales Sheet. A Specification may include (inter alia) details of the Products measurements, tolerances, regulatory compliance, packaging and compliance with quality standards.

## **6. PRICE**

**6.1** The price of Products shall be the price specified in the Sales Sheet or as otherwise agreed and specified in the Confirmation (as applicable). Prices specified in a Sales Sheet will be subject to review and possibly change from time to time in accordance with the mechanism specified in that Sales Sheet.

**6.2** The Supplier will use its reasonable endeavours to ensure that prices are accurately specified in any quote and in the Materials.

**6.3** The Supplier reserves the right to invoice sums in addition to the agreed price to reflect any increase in the cost to the Supplier of supplying any Products which is due to: (i) any increase in the cost of labour or materials (including any storage costs) as a consequence of Delivery of the Products not being in accordance with clause 8.1 or 8.2 (as applicable), (ii) any variation requested by the Customer to delivery dates, quantities, the Specification or the scope of the Supplier's instructions, (iii) any delay or additional work or materials caused by any erroneous instructions, neglect or default of the Customer, or (iv) any failure of the Customer to provide the Supplier with adequate and timely information, instructions, or specifications. Subject to the foregoing, prices charged will be those prevailing when an order is accepted.

**6.4** Unless set out in the Sales Sheet or Confirmation, any reference to the price for Products is in U.S. Dollars and is exclusive of any VAT or other taxes or duties and of all costs and charges in relation to non-standard packaging, loading, unloading, carriage and insurance or similar costs, which (if any) shall be paid in addition by the Customer at the time it is due to pay for the Products. Where carriage or other costs to be borne by the Customer are paid by the Supplier, the Supplier shall be entitled to immediately render an invoice in respect of such costs.

## **7. PAYMENT**

**7.1** The Supplier shall at its discretion be entitled to invoice the Customer for payment of the price of any Products or any other amounts in advance. The Supplier reserves the right, where the Customer is required to pay for an order in advance, to suspend Delivery of any Products pending receipt of payment.

**7.2** Unless otherwise set out in a Sales Sheet or Confirmation, payment of the Supplier's invoice is due by the Customer (without deduction, discount, abatement or set-off) within 30 days of the date of the invoice, notwithstanding that Delivery may not have taken place or that property in the Products has not passed to the Customer. Payment shall be made in the currency stipulated in the Sales Sheet or Confirmation (as applicable). Time for payment of sums due from the Customer shall be of the essence. No payment will be deemed received until received by the Supplier in cash or cleared funds.

**7.3** Payment is to be made by the Customer via the payment method stipulated in the Sales Sheet or Confirmation (as applicable).

**7.4** If the Customer is permitted to open a credit facility with the Supplier, it must furnish such information and references as may be requested by the Supplier and the Supplier may make a search with a credit reference agency in relation to the Customer. The Supplier reserves the right in its absolute discretion to grant, refuse or discontinue any credit facilities or reduce or suspend any credit facility at any time.

**7.5** If any sums are not paid on or before the due date for payment, interest will accrue on the amount unpaid at the rate of six percent per annum above the base rate of (i) the bank specified in the Sales Sheet, or (ii) if no such bank is specified, the Wall Street Journal (or any successor). Such interest shall accrue on a daily basis from the due date until payment is made in full (both before and after any judgment).

**7.6** If the Customer fails to make any payment when due pursuant to a Contract then, without prejudice to any other right or remedy available to the Supplier (including the right to charge interest pursuant to clause 7.5, the Supplier shall be entitled to: (i) deduct outstanding sums

from any sums owed by the Supplier to the Customer under the Contract or otherwise, (ii) require the Customer to pay any costs of storage of the Products, (iii) suspend any further deliveries to the Customer under the Contract or any other contract between the parties until paid, (iv) resell any Products not yet delivered to the Customer, and/or (v) retain any sums paid as deposit for the Products.

## **8. DELIVERY**

**8.1** Where the Customer's order has been placed in the manner described in clauses 3.3.1 or 3.3.2, subject to anything specified to the contrary in the Sales Sheet or otherwise agreed and specified in the Confirmation, the Contract shall be Ex Works (Incoterms 2010) at the Supplier's premises and Delivery of the Products shall be effected accordingly. Additional details regarding the physical Delivery of the Products (including the date of collection by the Customer) may be agreed between the parties and set out in the Sales Sheet and/or Confirmation.

**8.2** Where the Customer's order has been placed in the manner described in clause 3.3.3 (but subject to clause 8.3), Products will be sent to the Customer by a carrier service chosen by the Supplier, acting reasonably. Delivery of the Products to the Customer shall be effected by the Supplier delivering the Products to the carrier or by collection by the carrier. Thereafter, transport of such Products shall be subject to the carrier's conditions which shall be notified to the Customer if the Customer requests, and, subject to clause 10.1, the Supplier shall have no liability for the acts or omissions of the relevant carrier, unless otherwise agreed and specified in the Confirmation. The Supplier may deliver Products earlier than any agreed delivery date.

**8.3** Where it is agreed and specified in the Confirmation that Products ordered in the manner described in clause 3.3.3 shall be delivered by a method other than that referred to in clause 8.2 then delivery shall be effected: (i) where the Products are to be collected by the Customer from the Supplier's premises, by the Supplier notifying the Customer that the Products are ready for collection, (ii) where the Products are delivered by the Supplier, by the Supplier delivering the Products to the address nominated by the Customer for delivery, or (iii) where the Products are to be transported by a third party, by collection by or delivery to that third party of the Products.

**8.4** The remainder of this clause 8 shall apply to all Contracts regardless of the manner in which the order was placed by the Customer.

**8.5** Unless otherwise set out in the Sales Sheet or Confirmation, any periods of time or dates quoted for Delivery of the Products are estimates only. The Supplier will use its reasonable endeavours to deliver the Products by the delivery date set out in the Sales Sheet or Confirmation (as applicable). If the Supplier is unable to meet the delivery date because of an event outside the Supplier's control, the Supplier will contact the Customer with a revised delivery date.

**8.6** The Supplier may deliver up to 10 percent more or 10 percent less than the quantity of Products specified in the order and the Customer shall accept such variation in quantity and shall pay the agreed price as adjusted to reflect such variation in quantity. Where more than 10 percent or less than 10 percent of the quantity of Products specified in the order are delivered, the Customer and the Supplier shall discuss the excess supply or short supply (as the case may be) and (a) in the case of an excess supply: (i) if the Customer wishes to keep the additional Products, the Customer shall pay the agreed price as adjusted to reflect excess

supply, or (ii) if the Customer does not wish to keep the additional Products, the Customer shall promptly return the additional Products in accordance with the Supplier's directions and at the Supplier's cost, or (b) in the case of a short supply: (i) if the Customer does not wish to be delivered additional Products to make up the order, the Customer shall pay the agreed price as adjusted to reflect short supply, or (ii) if the Customer wishes to take delivery of additional Products to make up the order, the Supplier shall (where available and in supply) promptly deliver such additional Products to the Customer. The quantity of any consignment of Products, as recorded by the Supplier, on dispatch from the Supplier's premises, shall be conclusive evidence of the quantity received by the Customer on Delivery, unless the Customer can provide conclusive evidence to the contrary.

**8.7** The Supplier shall not be responsible for any losses incurred or suffered by the Customer as a result of a failure to deliver the Products or for short Delivery unless the Customer has informed the Supplier in writing within 12 days from the estimated date of Delivery (in relation to a failure to deliver) or on the actual date of Delivery (in relation to a short Delivery). In any event, where for any reason the Supplier is liable to the Customer for any such losses, the Supplier's liability shall be limited to: (i) the amount by which the price in the cheapest available market of similar goods to replace those not delivered exceeds the agreed price of the Products not delivered, or (ii) if there is no such market, an amount equal to the agreed price applicable in respect of the Products not delivered.

**8.8** Where the Customer fails to take Delivery of the Products or fails to give the Supplier adequate Delivery instructions in advance of the time stated for Delivery (other than by reason of any cause beyond the Customer's reasonable control or by reason of the Supplier's neglect or default) then the Products shall be deemed to have been delivered at the time stated for Delivery and, without prejudice to any other right or remedy available to the Supplier, the Supplier may: (i) store the Products until actual Delivery and charge the Customer for the reasonable costs (including insurance) of storage, if applicable but without any obligation on the Supplier to procure insurance, or (ii) where the Customer has failed to take Delivery of the Products on or before the seventh day following the intended day for Delivery, sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) shall reimburse the Customer if the agreed price has already been paid by the Customer or invoice the Customer for any shortfall below the agreed price if payment has not yet been made.

**8.9** Where the Products are to be delivered in instalments, each Delivery shall constitute a separate obligation and neither any failure by the Supplier to deliver nor any claim in respect of any one or more instalments by the Customer shall entitle the Customer to treat the Contract as a whole as repudiated.

**8.10** If, upon Delivery of the Products, the Customer discovers that it has incorrectly ordered those Products, the Supplier's standard handling charge from time to time will be payable by the Customer if the Supplier agrees (at its sole discretion) to accept return of those Products (at the Customer's risk).

## **9. RESTRICTED DELIVERY**

**9.1** The applicable Sales Sheet may specify that the Supplier does not deliver Products to addresses in certain countries. The Supplier may place an order for Products in those countries, but the order must be for Delivery to an address outside the prohibited countries.

## **10. RISK AND PROPERTY IN THE PRODUCTS**

- 10.1** Products supplied by the Supplier shall be at the Customer's risk when the Products are unloaded from the Supplier's carrier at the Customer's premise or, where the Products are collected by the Customer from the Supplier's premise (or any other location agreed between the parties), immediately upon being made available for collection. The Customer acknowledges that it is responsible for arranging appropriate insurance for the Products from the point at which it assumes risk.
- 10.2** Title (legal and beneficial) in all Products supplied shall be retained by the Supplier until the Supplier has received in either cash or cleared funds all sums due in respect of the Products.
- 10.3** Following risk in the Products passing to the Customer pursuant to clause 10.1, until such time as title in the Products passes to the Customer, the Customer must: (i) hold such Products (on a fiduciary basis for and on behalf of the Supplier) as the Supplier's bailee and act in good faith to protect the Supplier's interests in the Products, (ii) store such Products (at no cost to the Supplier) separately from all other goods of the Customer in such a way that such Products remain identifiable as property of the Supplier and shall not mix them with any other goods, (iii) not pledge or allow any lien, charge, or other interest to arise over the Products or their documents of title, (iv) not destroy or deface any identifying marks on such Products or relevant packaging and maintain such Products in satisfactory condition, and (v) keep such Products insured on the Supplier's behalf and in the event of any claim resulting from loss, theft or damage hold the proceeds of such insurance on trust for the Supplier.
- 10.4** In the event that the Customer fails to pay the price of the Products by the due date, the Supplier shall be entitled at any time to require the Customer to deliver up the Products to the Supplier prior to title in the Products passing to the Customer. The Customer grants the Supplier and its agents the right at any such time to enter any premises where the Products are stored to inspect or, if the Customer has failed to deliver up possession when requested by the Supplier, to repossess the Products.

## **11. QUALITY OF PRODUCTS**

- 11.1** The Supplier warrants that on Delivery all Products will be of satisfactory quality and (if applicable) will conform to the Specification.
- 11.2** The warranty contained in clause 11.1 shall not apply unless:
- 11.2.1** in respect of defects that are apparent on inspection of the Products, the Customer notifies the Supplier in writing, setting out in reasonable detail the nature of the breach of warranty within 14 days after Delivery;
  - 11.2.2** in relation to latent defects, the Customer notifies the Supplier in writing setting out in reasonable detail the nature of the breach of warranty within 14 days after the defect became apparent or ought to have become apparent to the Customer, and in any event within 6 months of the date of Delivery;
  - 11.2.3** after receiving such notice of the defect, the Supplier is given reasonable opportunity to inspect the Products and, at the Supplier's request (acting reasonably), the Products are returned to the Supplier's place of business (at the Customer's risk and cost) for the purpose of inspection;
  - 11.2.4** the total price for the Products has been paid by the Customer; and

- 11.2.5** none of the events listed in clause 11.3 apply.
- 11.3** The Supplier shall not be liable for any breach of the warranty in clause 11.1 if:
- 11.3.1** the Customer makes any further use of the Products after giving notice in accordance with clause 11.2;
  - 11.3.2** the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
  - 11.3.3** the defect arises as a result of the Supplier following any drawing, design or specific requirement or instructions supplied or approved by the Customer (including any such thing which may constitute (or form part of) the Specification);
  - 11.3.4** the Customer alters or repairs the Products without the written consent of the Supplier;
  - 11.3.5** the Customer makes further use of or resells a Product after the Supplier gives notice of a defect or the Customer fails to comply with the Supplier's reasonable instructions in relation to a Product hold or recall;
  - 11.3.6** the defect arises as a result of reasonable wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 11.3.7** the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 11.4** If the Customer fails to give notice of rejection in accordance with clause 11.2, it shall be deemed to have accepted the Products.
- 11.5** If the Customer rejects Products under clause 11.2 then the Customer shall be entitled to: (i) require the Supplier to repair or replace the rejected Products, or (ii) require the Supplier to repay the price of the rejected Products in full. Once the Supplier has complied with the Customer's requirement, it shall have no further liability to the Customer in respect of the rejected Products' failure to comply with clause 11.1.
- 11.6** The terms of the Contract shall apply to any repaired or replacement Products supplied by the Supplier. All Products which have been replaced pursuant to clause 11.5 shall belong to the Supplier.
- 11.7** To the extent permitted by law and subject to clauses 12.5, the requirement to provide the remedy contained in clause 11.5 shall be the sole extent of the Supplier's liability arising out of or in connection with any breach of clause 11.1 or any other claim relating to the quality of the Products.
- 11.8** The Customer shall comply with all reasonable instructions of the Supplier in relation to any Product hold or Product recall campaign organised in respect of any Products or any other corrective action reasonably taken by or on behalf of Supplier in respect of the Products after Delivery to Customer. Unless required by law, the Customer may not undertake any Product recall or withdrawal without the written permission of the Supplier and only then in strict

compliance with the Supplier's instructions as to the process of implementing the withdrawal.

## **12. LIMITATION OF LIABILITY**

**12.1** For the purposes of this clause 12, a "**Claim**" means a claim arising out of or in connection with the supply of any Products to the Customer or as a result of breach of a Contract or of any duty of any nature whatsoever by the Supplier or pursuant to any use made by the Customer or resale by the Customer of any Products (or of any product incorporating any of the Products) or as a result of any representation, statement, act or omission including negligence or breach of statutory duty arising under or in connection with a Contract.

**12.2** **Subject to clause 12.5, the Supplier's aggregate liability (including any liability for the acts or omissions of its employees, agents, sub-contractors or other members of its Group) to the Customer for all Claims shall be limited as follows:**

**12.2.1** **the Supplier's aggregate liability for a Claim in relation to any single item of Product shall be limited to the price payable by the Customer for that item; and**

**12.2.2** **the Supplier's aggregate liability to the Customer for all other Claims brought in any calendar year shall be limited to the total amount paid by the Customer to the Supplier for Products during that calendar year.**

**12.3** **Subject to clause 12.5, the Supplier shall not be liable to the Customer for any (a) indirect losses, (b) economic loss, (c) loss of profits or anticipated profits, (d) loss of anticipated savings, (e) loss of business or of expected future business, (f) damage to reputation or goodwill, or (g) punitive, exemplary, treble, special, indirect or consequential loss, which in each case arises under or in connection with a Contract.**

**12.4** **Notwithstanding anything herein to the contrary and to the fullest extent permitted by law, all implied warranties, including but not limited to, the implied warranties of merchantability, non-infringement, or fitness or suitability for any particular purpose or use, are excluded from a Contract and, subject to clause 12.5, the Supplier will not be liable to the Customer for any loss of any kind whatsoever which arises out of the breach of implied warranties, terms or conditions, or breach of any duty of any kind imposed on the Supplier by operation of law.**

**12.5** Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability in respect of (i) any death or personal injury caused by its gross negligence, (ii) any fraud or fraudulent misrepresentation, or (iii) any other liability to the extent that it may not be so excluded or limited by law.

**12.6** If the Customer becomes aware that any third party has made or appears likely to make any claim against the Customer in respect of the Products (including as to defects in them or rights infringed by them) it shall: (i) promptly notify the Supplier of such claim or circumstance, (ii) promptly take such action as the Supplier may reasonably request to avoid, dispute, defend, mitigate, resist, appeal or compromise such claim or circumstance including to allow the Supplier to take full control of any proceedings or negotiations in connection with the claim, and (iii) not settle or compromise, make any admissions, nor agree any matter in the conduct of any dispute, without the prior written approval of the Supplier.

**12.7** The Customer acknowledges that the limitations of liability set out in these Terms and Conditions are reasonable and reflect the commercial intentions of the parties in the context of the anticipated earnings of the Supplier under a Contract and the ability of the Customer to protect itself through insurance.

### **13. EVENTS OUTSIDE THE SUPPLIER'S CONTROL**

**13.1** The Supplier will not be in breach of the terms of a Contract for any delay in performing, or failure to perform, its obligations under the Contract if that failure or delay was due to any cause or circumstance beyond the Supplier's reasonable control, which shall, without limiting the generality of the term, include war or other action of military forces, terrorism, riot, civil commotion, sabotage, vandalism, accident, break down or damage to machinery or equipment, fire, flood, acts of God, strike, lock-out or other industrial disputes or shortage of materials at the market rates existing when the Contract is made, legislative or administrative interference (including, for example, Sanctions, embargos and Export Controls) or was due to any failure, neglect or delay on the part of the Customer or its agents or representatives.

**13.2** The Supplier reserves the right to defer the date of Delivery or to terminate the Contract or reduce the volume of the Products ordered by the Customer (with an appropriate reduction in the price payable by the Customer) if it is prevented from or delayed in the carrying on of its business due to an event referred to in clause 13.1 occurring, and where the event in question continues for a continuous period in excess of 30 days either party shall be entitled to give notice in writing to the other to terminate the Contract with no liability due to or by either party.

### **14. TERMINATION**

**14.1** Without affecting any other rights and remedies, the Supplier may immediately terminate a Contract if: (i) the Customer fails to pay any sum due under the Contract by the due date for payment and remains in default not less than 14 days after being notified in writing by the Supplier to make such payment, (ii) the Customer materially breaches any term of the Contract, (iii) the Customer makes any composition or voluntary arrangement with its creditors or any step, application, order, proceeding or appointment is made or taken by or in respect of the Customer (including the making of an application or the giving of any notice) by the Customer or any other person for a distress, execution, winding up, dissolution, or to appoint an administrator of the Customer or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), (iv) an encumbrance takes possession, or a receiver (administrative or otherwise) is appointed, of any of the property or assets of the Customer, or the Customer ceases, or threatens to cease, to carry on business, or (v) the Supplier possesses bona fide and justifiable reason to believe that any of the events specified in (iii) or (iv) above is likely to occur and notifies the Customer accordingly.

**14.2** Where the Supplier terminates the Contract in accordance with clause 14.1, without prejudice to clauses 10.3 or 10.4 or to any other right or remedy available to the Supplier: (i) the Supplier shall be entitled to terminate any other contract or suspend any further deliveries under any other contract between the parties, (ii) where the Products have been delivered, but not paid for, the Customer's right to possession shall terminate and the Supplier may dispose or use any of the Products as it wishes, and (iii) the price for the Products shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**14.3** Termination of the Contract, for whatever reason, shall not affect any of its provisions which are expressed or are intended to continue to have effect after it has come to an end.

## **15. INDEMNITY**

**15.1** Without prejudice to the Supplier's other rights and remedies and to the fullest extent permitted by law, the Customer shall indemnify and keep indemnified the Supplier, its Group and its employees and agents on demand in full against any loss, liability, damage, costs, claims and expenses (including but not limited to attorney's fees, expert's fees and expenses of litigation) incurred or suffered as a result of: (i) any claim brought by any third party in respect of losses, injury or damage caused by any Products which, following Delivery, have been subjected to any use other than the authorised use for the Products (being the use for which the Products are commonly supplied) or modified or repaired by a person other than the Supplier, (ii) any allegation or claim made against the Supplier by a third party in relation to the actual or purported infringement of that third party's Intellectual Property Rights due to the incorporation into a Product design of any requirements, designs, specifications or other materials (including third party components) stipulated or provided by the Customer, (iii) the negligence of Customer, and (iv) the breach by Customer of any of the terms and conditions of this Contract.

## **16. INTELLECTUAL PROPERTY RIGHTS**

**16.1** Save where otherwise agreed in a Sales Sheet and/or Confirmation, the Supplier and/or the Supplier's licensors shall own all Intellectual Property Rights in the Products, Catalogue and any Materials.

**16.2** The Customer is not granted any rights or licence in respect of the Products, other than the right to use or resell the Products in the Customer's ordinary course of business and otherwise in accordance with the terms and conditions of the Contract.

**16.3** The Supplier grants to the Customer a limited, non-exclusive, non-transferable licence, without the right to sublicense, to access and view and (unless shown as not permitted) download and print the Materials in each case solely for the Customer's personal purposes.

**16.4** The Customer shall not use, copy, adapt, transmit, distribute, modify, publish, reverse engineer, create derivative works based upon, distribute, licence, sell, transfer, publically perform, broadcast, communicate to the public or otherwise exploit the Materials except as expressly permitted in these Terms and Conditions or otherwise without the Supplier's prior written consent.

## **17. EXPORT CONTROLS AND SANCTIONS**

**17.1** The Customer warrants and represents that neither it, nor any of its Group, nor any directors, officers or employees of any of its Group: (i) is a Restricted Party or is engaging in or has engaged in any transaction or conduct that could result in it becoming a Restricted Party, (ii) has engaged or is engaging, directly or indirectly, in any trade, business or other activities with, for the benefit of, or on behalf of, any Restricted Party, (iii) has violated or is violating applicable laws, statutes, regulations and codes relating to Export Controls or Sanctions.

**17.2** The Customer acknowledges that some of the Products, their components and technologies may be subject to Export Controls and Sanctions. The Customer shall: (i) comply with Export Controls and Sanctions applicable to both the Supplier and the Customer, (ii) not export, re-export, transfer or trade, directly or indirectly, with or to any Restricted Party nor any person

or entity incorporated or located in any country subject to Sanctions, (iii) obtain at its cost any licence, permit, notification or authorisation required to sell, export, re-export, transfer or import the Products, their components and technologies, and (iv) ensure that the end-use of the Products will not breach any Export Controls or Sanctions, including weapons of mass destruction and military end-use controls.

## **18. GENERAL**

- 18.1** The Customer shall at all times: (i) respond promptly to any request for guidance or instruction which is reasonably required by the Supplier to enable it to perform its obligations under a Contract; (ii) co-operate and liaise with the Supplier as necessary or desirable for the performance of a Contract, and (iii) promptly provide the Supplier with all documents and information in the Customer's possession or control which the Supplier reasonably requires in order to comply with its internal and Group policies and with all applicable laws and regulatory requirements (including all documents and information associated with know your customer checks).
- 18.2** The Contract contains the entire agreement and understanding of the parties and supersedes all prior agreements, understandings or arrangements (both oral and written) in respect of the Products. The Customer acknowledges that it is entering into the Contract without reliance on any undertaking, warranty, or representation given by or on behalf of the Supplier, other than as expressly contained in the Contract (or any document expressly incorporated into the Contract). This clause 18.1 is subject to clause 12.5(iv).
- 18.3** The parties acknowledge that in performing their obligations hereunder, each party is acting as an independent contractor. Nothing in this Contract shall be construed to create a partnership, joint venture, franchise or other similar arrangement between the parties. Neither party has the authority to enter into any agreement, or make any warranty or representation on behalf of the other party, except where and to the extent specifically authorized to do so in writing. To the extent that either party utilizes its employees for the performance of its duties pursuant to this Contract, that party shall be solely responsible for the payment of salaries and wages to such employees and matters relating thereto (including the withholding and/or payment of all federal, state and local income and other payroll taxes), workers compensation, disability benefits, and all such other legal requirements of like nature applicable to such employees.
- 18.4** The Customer shall not transfer, assign, sub-contract or deal in any other similar manner any of its rights or obligations under the Contract or purport to do any of the same.
- 18.5** Any notice shall be in writing and addressed to the other party at, in the case of the Supplier, the address or email address specified in the Sales Sheet and/or Confirmation (as applicable) and in the case of the Customer at the address or email address specified in the Sales Sheet or (if that is not applicable) at its registered address or an email address it may have used to place an order for Products with the Supplier. Hand delivered notices shall take effect immediately; postal notices, two Working Days after posting by first class post (five Working Days if sent by airmail post); and notice sent by email, at the date and time the email is sent (unless an out-of-office message is received by the sending party, in which case notice will not have been validly served).
- 18.6** The invalidity, illegality or unenforceability of any provision of these Terms and Conditions shall not affect the other provisions and the Contract shall be given effect as if the invalid, illegal or unenforceable provision had been deleted.

- 18.7** Where the Contract is entered into in the manner described in clause 3.3.1, the Sales Sheet may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart, when executed, shall be an original, but all counterparts shall together constitute one and the same instrument.
- 18.8** No variation of the Contract shall be effective unless it is made in writing, refers specifically to the Contract and is signed by both of the parties.
- 18.9** No waiver of any term, provision or condition of the Contract shall be effective, except where it is clearly made in writing and signed by the waiving party. No waiver of any particular breach of the Contract shall be held to be a waiver of any other or subsequent breach.
- 18.10** No omission or delay on the part of any party in exercising any right, power or privilege under the Contract shall operate as a waiver by it or of any right to exercise it in future or of any other of its rights under the Contract.
- 18.11** The rights and remedies arising under, or in connection with, the Contract are cumulative and, except where otherwise expressly provided in the Contract do not exclude rights and remedies provided by law or otherwise.
- 18.12** This Contract shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Illinois (not including the choice of law rules thereof). The United Nations Convention on the International Sale of Goods shall not apply to the Contract. To the extent relevant pursuant to clause 8.1 the international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply (unless agreed otherwise) but where they conflict with the Contract, the Contract shall prevail.
- 18.13** Subject to clause 18.14, any and all disputes, complaints, controversies, claims and grievances arising under, out of, in connection with, or in any manner related to this Contract or the relationship of parties hereunder shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The obligation to arbitrate shall extend to any affiliate, subsidiary, officer, employee, shareholder, principal, agent, trustee in bankruptcy or guarantor of a party making or defending any claim hereunder. Any decision and award of the arbitrator shall be final, binding and conclusive upon all of the parties hereto and said decision and award may be entered as a final judgment in any court of competent jurisdiction. Notwithstanding said Rules, any arbitration hearing to take place hereunder shall be conducted in Chicago, Illinois, before one (1) arbitrator who shall be an attorney who has substantial experience in commercial law issues. However, neither party shall institute an arbitration, or any other proceeding to resolve such disputes between the parties before that party has sought to resolve disputes through direct negotiation with the other party. If disputes are not resolved within three (3) weeks after a demand for direct negotiation, the parties shall attempt to resolve disputes through mediation conducted in Chicago, Illinois. If the parties do not agree on a mediator within ten (10) days, either party may request the American Arbitration Association to appoint a mediator who shall be an attorney who has substantial experience in commercial law issues. If the mediator is unable to facilitate a settlement of disputes within forty-five (45) days, the mediator shall issue a written statement to the parties to that effect and the aggrieved party may then seek relief through arbitration as provided above. The fees and expenses of the mediator shall be split and paid equally by each of the parties. In the event of any arbitration between the parties hereto involving this Contract or the

respective rights of the parties hereunder, the party who does not prevail in such arbitration shall pay all the prevailing party's reasonable attorneys' and experts' fees, costs and expenses incurred by the prevailing party in resolving said matter. As used herein the term 'prevailing party' shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, settlement, or judgment. Each party hereby consents to a single, consolidated arbitration proceeding of multiple claims, or claims involving two (2) or more parties. Either party may apply to any court of competent jurisdiction for injunctive relief or other interim measures as provided for elsewhere in this Contract, in aid of the arbitration proceedings, or to enforce the arbitration award, but not otherwise. Any such application to a court shall not be deemed incompatible or a waiver of this provision. The arbitrator shall be required to make written findings of fact and conclusions of law to support its award. Except as may be required by law, neither a party nor an arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. By execution of this Agreement, the parties consent to the jurisdiction of the American Arbitration Association and waive any objection which either party may have to any proceeding so commenced based upon improper venue or forum non conveniens.

- 18.14** Nothing in this clause 18 shall limit the right of the Supplier to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the Supplier from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.