

**Axon Enterprises Limited**  
**Terms and Conditions of Sale to End Users**

The End User's attention is in particular drawn to the provisions of Condition 10.4.

**1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this Condition apply in these Terms and Conditions.

**Business Day:** a day in which normal business is conducted for the purposes of delivery, including Monday to Friday between the hours of 8.00am and 6.00pm, but excluding weekends and bank holidays.

**Company:** Axon Enterprises Limited (Company No 2311866).

**Condition:** a term or requirement stated in a contract which must be met for the other party to have the duty to fulfil his/her obligations.

**Contract:** any contract between the Company and the End User for the sale and purchase of the Goods which is stated to incorporate these Conditions.

**Delivery Point:** the place where delivery of the Goods is to take place under Condition 4.

**End User:** the person, firm or company who purchases Goods from the Company in order to use the Goods for their intended purpose.

**Force Majeure Event:** has the meaning given in clause 12.

**Goods:** any goods agreed in the Contract to be supplied to the End User by the Company (including any part or parts of them).

**Order:** the End User's order for the Goods, as set out in the End User's purchase order form or the End User's placing of an order on the Company's website, as the case may be.

**Services:** acts or procedures that are part of or incidental to installation of any Goods by the Company for the Buyer pursuant to the Contract (including any part performance thereof).

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to any gender.
- 1.5 Headings do not affect the interpretation of these Conditions.

## **2. APPLICATION OF TERMS**

- 2.1 Subject to any variation under Condition 2.3 the Contract shall be on, and subject to, these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the End User purports to apply under any purchase order, confirmation of order, specification or other document), or which are implied by trade, custom, practice or course of dealing.
- 2.2 No terms or conditions endorsed on, delivered with or contained in the End User's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods and or the Services shall have no effect unless expressly agreed in writing and signed by a director of the Company. The End User 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.
- 2.4 Each Order constitutes an offer by the End User to purchase the Goods and/or the Services in accordance with these Conditions.
- 2.5 No Order placed by the End User shall be deemed to be accepted by the Company until a written acknowledgement of Order confirming agreement of content is issued by the Company.
- 2.6 The End User shall ensure that the terms of its Order and any applicable specification are complete and accurate. It is the End User's responsibility to check that any Goods and/or the Services purchased fulfil its requirements and comply with any local bye-laws or regulations. Any changes or alterations made to an Order by the End User after the issuing of an acknowledgement of Order will be subject to an administration charge calculated on the basis of management times and disbursements.

- 2.7 Any quotation is given by the Company on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of Order to the End User. Any quotation is valid for a period of 30 days only from its date. The placing of an Order on the Company's website is conclusive evidence of acceptance of the quotation given latest in time by the Company.
- 2.8 All right, title and interest in any plans, drawings, specifications, quotations and all intellectual property prepared by the Company for an End User or in connection with a Contract remains with the Company.
- 2.9 Orders may only be cancelled at the Company's sole discretion and subject to the End User paying any charges and expenses incurred by the Company in relation thereto. No cancellation will be accepted by the Company for Goods specially ordered or fabricated by the Company for the End User.
- 2.10 The End User has an option to request termination of the Contract but the Company shall have an absolute discretion to accept or decline this request. This request shall only be considered prior to despatch of the Goods and must be agreed in writing by the Company.
- 2.11 In such event the Company may at its sole discretion agree to the return of Goods by the End User provided the Goods are returned at the End User's expense, in the same condition and in the original packaging as at the date of despatch by the Company or the manufacturer and subject to the End User bearing any costs incurred by the Company calculated on the basis of management times and disbursements.

### **3. DESCRIPTION**

- 3.1 The quantity and description of the Goods and/or the Services shall be as set out in the Company's quotation or acknowledgement of Order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's or any manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or the Services described in them. They shall not form part of the Contract and this is not a sale by sample. Where any such details are important to the End User, the End User should verify such details with the Company prior to placing its order.

#### **4. DELIVERY**

- 4.1 Unless otherwise agreed by the Company, the Company shall deliver the Goods FCA Incoterms 2010 to the agreed delivery location within the United Kingdom of Great Britain, Northern Ireland and the Republic of Éire.
- 4.2 The Company may issue a premium delivery charge for delivery to areas including Northern Ireland, the Republic of Éire, the Highlands and Scottish Islands, and other offshore Delivery Points.
- 4.3 Any dates specified by the Company for delivery of the Goods and/or the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. The Company shall not be liable for any delay in delivery of the Goods and/or the Services that is caused by a Force Majeure Event or the End User's failure to provide the Company with any instructions that are relevant to the supply of the Goods and/or the provision of the Services.
- 4.4 Delivery is to be made at ground floor kerbside at the Delivery Point on an agreed Business Day or between the hours of 8.00am and 12.00pm on Saturdays. This is the case unless a premium upgrade option has been requested by the End User.
- 4.5 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or the Services (even if caused by the Company's negligence), nor shall any delay entitle the End User to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.6 If for any reason the End User fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the End User has not provided appropriate instructions, documents, licences or authorisations (if applicable):
- a) risk in the Goods shall pass to the End User (including for loss or damage caused by the Company's negligence);

- b) the Goods shall be deemed to have been delivered; and
  - c) the Company may store the Goods until delivery, whereupon the End User shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
  - d) a redelivery charge will be applied to the End User's account.
- 4.7 The End User shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading and unloading (if applicable) of the Goods. Should the Company agree to deliver the Goods to a location other than its premises, the Company shall not be liable to the End User for any damage to the Goods as a consequence of inadequate site access or inadequate unloading facilities.
- 4.8 If the Company delivers to the End User a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the End User shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.9 The End User must unpack and inspect the Goods for damage at the Delivery Point if the Order contains a consignment of 10 or fewer units. The Company shall not be liable for any damage to the Goods if the damage is not noted on the delivery note or if it is signed as 'unexamined'. If the Order contains a consignment of more than 10 units, the End User has a period of 48 hours to inspect the Goods.
- 4.10 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.11 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the End User to repudiate or cancel any other Contract or instalment.
- 4.12 Each Order is treated as a separate transaction and will be subject to delivery and small order surcharges (as appropriate).

## **5. NON-DELIVERY AND RESTOCKING**

- 5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business or the manufacturer on despatch from the manufacturer's place of business shall be conclusive evidence of the quantity received by

the End User on delivery unless the End User can provide conclusive evidence proving the contrary within 48 hours of delivery.

- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the End User gives written notice to the Company of the non-delivery within 48 hours of the time when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for failure to deliver the Goods on the due date shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 5.4 The Company shall endeavour to hold sufficient stock to meet all of its anticipated Orders within 14 days of receipt. However if there is insufficient stock to supply or deliver all or part of the Goods already paid for by the End User, the Company reserves the right to cancel the Order. In such event, the only remedy available to the End User shall be a refund of monies paid.
- 5.5 If the Company exercises its right to cancel the Order, the Company shall notify the End User and refund the Contract price as soon as possible and in any event within 30 days. The Company will not be obliged to offer any additional compensation for other related losses or for disappointment suffered.

## **6. RISK/TITLE**

- 6.1 Notwithstanding any alternative delivery arrangements agreed between the Company and the Buyer, the Goods shall be at the risk of the End User from completion of delivery as described in Condition 4.1.
- 6.2 Ownership of the Goods shall not pass to the End User until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- a) the Goods; and
  - b) all other sums which are or which become due to the Company from the End User under the Contract.
- 6.3 Until ownership of the Goods has passed to the End User, the End User shall:
- a) hold the Goods on a fiduciary basis as the Company's bailee;

- b) store the Goods (at no cost to the Company) separately from all other goods of the End User or any third party in such a way that they remain readily identifiable as the Company's property;
  - c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - d) maintain the Goods in satisfactory Condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the End User shall produce the policy of insurance to the Company.
- 6.4 The End User may resell the Goods before ownership has passed to it solely on the following Conditions:
- a) any sale shall be effected in the ordinary course of the End User's business at full market value; and
  - b) any such sale shall be a sale of the Company's property on the End User's own behalf and the End User shall deal as principal when making such a sale.
- 6.5 The End User's right to possession of the Goods shall terminate immediately (and the End User shall notify the Company forthwith) if:
- a) the End User has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the End User or notice of intention to appoint an administrator is given by the End User or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the End User or for the granting of an administration order in respect of the End User, or any proceedings are commenced relating to the insolvency or possible insolvency of the End User; or

- b) the End User suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the End User, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the End User ceases to trade;
  - c) the End User encumbers or in any way charges any of the Goods; or
  - d) the End User becomes subject to any proceedings equivalent to those set out in this clause 6.5 (a) or (b) under any local jurisdiction applicable to it.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The End User grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the End User's right to possession has terminated, to recover them.
- 6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the End User's right to possession has terminated, the End User shall be deemed to have sold all goods of the kind sold by the Company to the End User in the order in which they were invoiced to the End User.
- 6.9 On termination of the Contract, howsoever caused, the Company's (but not the End User's) rights contained in this Condition 6 shall remain in effect.

## **7. PRICE**

- 7.1 Unless otherwise agreed by the Company in writing, the price for the Goods and/or the Services shall be the price set out in the Company's price list as on the date of the Contract. The Company reserves the right to amend prices prior to the Contract being formed. The Company may, by giving notice to the End User at any time up to 7 calendar days before delivery, increase the price of the Goods and/or the Services reflect any increase in the cost of the Goods and/or the Services that are due to:
- a) any request made by the End User to change the delivery date(s), quantities or types of Goods ordered, or any changes to any specification supplied by the End User; or
  - b) any delay caused by any instructions of the End User or failure of the End User to give the Company adequate or accurate information or instructions.

7.2 The price for the Goods and/or the Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts (if applicable) the End User shall pay in addition when paying the price for the Goods.

## **8. PAYMENT**

8.1 Subject to Conditions 8.4 and 8.8, payment of the price for the Goods and/or the Services is due in pounds sterling on the 26th day of the month following the month in which the invoice is submitted to the End User. However the Company reserves the right to request payment in advance.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 The End User shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the End User has a valid court order requiring an amount equal to such deduction to be paid by the Company to the End User.

8.6 If the End User fails to pay the Company any sum due pursuant to the Contract, or alternatively fails to pay on the date due for payment, the End User shall be liable to pay a statutory interest to the Company in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

8.7 In the event that the Company agrees special payment terms with an End User and the End User fails to pay any amount due in accordance with such special payment terms on its due date all monies due or which may become due by the End User to the Company shall become immediately due and payable.

## **9. QUALITY**

9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the End User the benefit of any warranty or guarantee given to the Company in respect of the Goods.

9.2 The Company warrants that (subject to the other provisions of these Conditions):

- a) the Goods and Services shall conform with any specification provided by the End User that is agreed between the Company and the End User; and
- b) it shall use reasonable care in performing the Services.

9.3 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 unless:

- a) the End User gives written notice of the defect to the Company, and:
  - i. if the Order is up to 20 units, and the defect in the Goods is as a result of damage in transit by the carrier (if applicable), within 1 Business Day of the time when delivery is deemed to have taken place as described in Condition 4.1, and this damage is recorded on the delivery note when signing to accept the delivery; or
  - ii. if the Order is between 20 and 100 units, and the defect in the Goods is as a result of damage in transit by the carrier (if applicable), within 2 Business Days of the time when delivery is deemed to have taken place as described in Condition 4.1; or
  - iii. if the Order is above 100 units, and the defect in the Goods is as a result of damage in transit by the carrier (if applicable), within 3 Business Days of the time when delivery is deemed to have taken place as described in Condition 4.1;

and:

- b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the End User (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

9.4 The Company shall not be liable for a breach of the warranties provided in Condition 9.2 if:

- a) the End User makes any further use of such Goods after giving such notice in accordance with clause 9.3;
  - b) the defect arises because the End User failed to follow the Company's written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - c) the End User alters or repairs such Goods without the written consent of the Company;
  - d) the defect arises as a result of fair wear and tear;
- 9.5 Subject to Condition 9.3, if any of the Goods and/or the Services do not conform with the warranty provided in Condition 9.2 the Company shall at its option repair or replace such Goods (or the defective part thereof), or re-perform the Services or refund the price of such Goods at the pro rata Contract rate provided that (in the case of Goods), if the Company so requests, the End User shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.
- 9.6 If the Company complies with Condition 9.6 it shall have no further liability for a breach of any of the warranties in Condition 9.2 in respect of such Goods and/or the Services.
- 9.7 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period.

## **10. LIMITATION OF LIABILITY**

- 10.1 Subject to Condition 4, Condition 5 and Condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the End User in respect of:
- a) any breach of these Conditions;
  - b) any use made or resale by the End User of any of the Goods, or of any product incorporating any of the Goods; and
  - c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 The terms implied by sections 13-15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions excludes or limits the liability of the Company:

- a) for death or personal injury caused by the Company's negligence; or
- b) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- d) defective products under the Consumer Protection Act 1987; or
- e) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- f) for fraud or fraudulent misrepresentation.

10.4 Subject to Condition 10.2 and Condition 10.3:

- a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price;
- b) the Company shall under no circumstances be liable to the End User for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10.5 This Condition 10 shall survive termination of the Contract.

## **11. ASSIGNMENT**

Neither party may assign the Contract or any part of it.

## **12. FORCE MAJEURE**

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the End User (without liability to the End User) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without

limitation, acts of God, governmental actions, war (whether war be declared or not) or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials (a "**Force Majeure Event**"), provided that, if the event in question continues for a continuous period in excess of 180 days, the End User shall be entitled to give notice in writing to the Company to terminate the contract.

### **13. GENERAL**

- 13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the End User shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any terms of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 13.7 The parties to the Contract shall attempt in good faith to resolve any dispute arising out of or relating to this Contract through negotiations between directors of the parties, who have authority to settle the same. If the matter is not resolved by negotiation within 30

days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators.

#### **14. DATA PROTECTION AND INTELLECTUAL PROPERTY RIGHTS**

- 14.1 Where the Company receives any personal data (as defined by the Data Protection Act 1998 (“the Act”)) from the End User, it shall ensure that it fully complies with the Act and only uses the data to fulfil its contractual obligations.
- 14.2 The Company shall indemnify the End User for any breach of the Act which renders the End User liable for any costs, claims or expenses.
- 14.3 Subject to any variation under condition 14.1, the End User is responsible for maintaining the confidentiality of his account details including username and password. The Company shall not be held liable for any loss or damage which may arise as a result of the End User’s failure to protect his account details.
- 14.4 Information supplied by the Company’s website is to be used for the purpose of placing orders to the Company.
- 14.5 The content of the Company’s website is owned or licensed by the Company. This content includes, but is not limited to, photographs, images, layout, graphics and general appearance. This content is protected by copyright, trademark, database and other intellectual property rights and any such rights will remain vested in the Company or its licensors.
- 14.6 The Company shall defend, indemnify and hold harmless the End User and its related parties against third party claims (including, without limitation, reasonable attorney’s fees) arising out of or in connection with a claim that the Goods, when used within the scope of the Contract, infringes or misappropriates a third party copyright, trademark, patent, database or other intellectual property right, provided that the Company is notified promptly in writing of this claim, the End User has not reached a settlement of such claim or made any admissions in respect of the same, and the Company is given the option (at

its expense) to control the action and all requested reasonable assistance to defend the same. This is exclusive of any infringements arising out of the use of specifications or other relevant information provided by the End User.

## **15. COMMUNICATIONS**

15.1 All communications between the parties about the Contract shall be in writing and delivered by hand, sent by pre-paid first class post, sent by fax or sent by email:

- a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the End User by the Company; or
- b) (in the case of the communications to the End User) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the End User set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the End User.

15.2 Communications shall be deemed to have been received:

- a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- b) if delivered by hand, on the day of delivery; or
- c) if sent by fax or email on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.

15.3 All correspondence will bear an account number and document number which is specific to each transaction.

15.4 Communications addressed to the Company shall be marked for the attention of a director of the Company.

**Axon Enterprises Limited**  
**Terms and Conditions of Sale to Distributors**

The Distributor's attention is in particular drawn to the provisions of Condition 10.4.

**1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this Condition apply in these Terms and Conditions.

**Business Day:** a day in which normal business is conducted for the purposes of delivery, including Monday to Friday between the hours of 8:00am and 6:00pm, but excluding weekends and bank holidays.

**Company:** Axon Enterprises Limited (Company No 2311866).

**Condition:** a term or requirement stated in a contract which must be met for the other party to have the duty to fulfil his/her obligations.

**Contract:** any contract between the Company and the Distributor for the sale and purchase of the Goods which is stated to incorporate these Conditions.

**Delivery Point:** the place where delivery of the Goods is to take place under Condition 4.

**Distributor:** the person, firm or company who purchases Goods from the company.

**Force Majeure Event:** has the meaning given in clause 12.

**Goods:** any goods agreed in the Contract to be supplied to the Distributor by the Company (including any part or parts of them).

**Order:** the Distributor's order for the Goods, as set out in the Distributor's purchase order form or the Distributor's placing of an order on the Company's website, as the case may be.

**Services:** acts or procedures that are part of or incidental to installation of any Goods by the Company for the Buyer pursuant to the Contract (including part performance thereof).

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

- 1.4 A reference to one gender includes a reference to any gender.
- 1.5 Headings do not affect the interpretation of these Conditions.

## **2. APPLICATION OF TERMS**

- 2.1 Subject to any variation under Condition 2.3 the Contract shall be on and subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Distributor purports to apply under any purchase order, confirmation of order, specification or other document), or which are implied by trade, custom, practice or course of dealing.
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Distributor's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods and or the Services shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Distributor 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.
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- 2.9 Orders may only be cancelled at the Company's sole discretion and subject to the Distributor paying any charges and expenses incurred by the Company in relation thereto. No cancellation will be accepted by the Company for Goods specially ordered or fabricated by the Company for the Distributor.
- 2.10 The Distributor has an option to request termination of the Contract, but the Company shall have an absolute discretion to accept or decline this request. This request shall only be considered prior to despatch of the Goods and must be agreed in writing by the Company.
- 2.11 In such event the Company may at its sole discretion agree to the return of Goods by the Distributor provided the Goods are returned at the Distributor's expense, in the same condition and in the original packaging as at the date of despatch by the Company or the manufacturer and subject to the Distributor bearing any costs incurred by the Company calculated on the basis of management times and disbursements.

### **3. DESCRIPTION**

- 3.1 The quantity and description of the Goods and/or the Services shall be as set out in the Company's quotation or acknowledgement of Order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's or any manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or the Services described in them. They shall not form part of the Contract and this is not a sale by sample. Where any such details are important to the Distributor, the Distributor should verify such details with the Company prior to placing its order.

#### **4. DELIVERY**

- 4.1 Unless otherwise agreed by the Company, the Company shall deliver the Goods FCA Incoterms 2010 to the agreed delivery location within the United Kingdom of Great Britain, Northern Ireland and the Republic of Éire.
- 4.2 The Company may issue a premium delivery charge for delivery to areas including Northern Ireland, the Republic of Éire, the Highlands and Scottish Islands, and other offshore Delivery Points.
- 4.3 Any dates specified by the Company for delivery of the Goods and/or the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. The Company shall not be liable for any delay in delivery of the Goods and/or the Services that is caused by a Force Majeure Event or the Distributor's failure to provide the Company with any instructions that are relevant to the supply of the Goods and/or the provision of the Services.
- 4.4 Delivery is to be made at ground floor kerbside at the Delivery Point on an agreed Business Day or between the hours of 8.00am and 12.00pm on Saturdays. This is the case unless a premium upgrade option has been requested by the Distributor.
- 4.5 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or the Services (even if caused by the Company's negligence), nor shall any delay entitle the Distributor to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.6 If for any reason the Distributor fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Distributor has not provided appropriate instructions, documents, licences or authorisations (if applicable):
- a) risk in the Goods shall pass to the Distributor (including for loss or damage caused by the Company's negligence);
  - b) the Goods shall be deemed to have been delivered; and

- c) the Company may store the Goods until delivery, whereupon the Distributor shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
  - d) a redelivery charge will be applied to the Distributor's account.
- 4.7 The Distributor shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading and unloading (if applicable) of the Goods. Should the Company agree to deliver the Goods to a location other than its premises, the Company shall not be liable to the Distributor for any damage to the Goods as a consequence of inadequate site access or inadequate unloading facilities.
- 4.8 If the Company delivers to the Distributor a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the Distributor shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.9 The Distributor must unpack and inspect the Goods for damage at the Delivery Point if the Order contains a consignment of 10 or fewer units. The Company shall not be liable for any damage to the Goods if the damage is not noted on the delivery note or if it is signed as 'unexamined'. If the Order contains a consignment of more than 10 units, the Distributor has a period of 48 hours to inspect the Goods.
- 4.10 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.11 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Distributor to repudiate or cancel any other Contract or instalment.
- 4.12 Each Order is treated as a separate transaction and will be subject to delivery and small order surcharges (as appropriate).

## **5. NON-DELIVERY AND RESTOCKING**

- 5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business or the manufacturer on despatch from the manufacturer's place of business shall be conclusive evidence of the quantity received by the Distributor on delivery unless the Distributor can provide conclusive evidence proving the contrary within 48 hours of delivery.

- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Distributor gives written notice to the Company of the non-delivery within 48 hours of the time when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for failure to deliver the Goods on the due date shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 5.4 The Company shall endeavour to hold sufficient stock to meet all of its anticipated Orders within 14 days of receipt. However if there is insufficient stock to supply or deliver all or part of the Goods already paid for by the Distributor, the Company reserves the right to cancel the Order. In such event, the only remedy available to the Distributor shall be a refund of monies paid.
- 5.5 If the Company exercises its right to cancel the Order, the Company shall notify the Distributor and refund the Contract price as soon as possible and in any event within 30 days. The Company will not be obliged to offer any additional compensation for other related losses or for disappointment suffered.

## **6. RISK/TITLE**

- 6.1 Notwithstanding any alternative delivery arrangements agreed between the Company and the Buyer, the Goods shall be at the risk of the Distributor from completion of delivery as described in Condition 4.1.
- 6.2 Ownership of the Goods shall not pass to the Distributor until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- a) the Goods; and
  - b) all other sums which are or which become due to the Company from the Distributor under the Contract.
- 6.3 Until ownership of the Goods has passed to the Distributor, the Distributor shall:
- a) hold the Goods on a fiduciary basis as the Company's bailee;
  - b) store the Goods (at no cost to the Company) separately from all other goods of the Distributor or any third party in such a way that they remain readily identifiable as the Company's property;

- c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - d) maintain the Goods in satisfactory Condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Distributor shall produce the policy of insurance to the Company.
- 6.4 The Distributor may resell the Goods before ownership has passed to it solely on the following Conditions:
- a) any sale shall be effected in the ordinary course of the Distributor's business at full market value; and
  - b) any such sale shall be a sale of the Company's property on the Distributor's own behalf and the Distributor shall deal as principal when making such a sale.
- 6.5 The Distributor's right to possession of the Goods shall terminate immediately (and the Distributor shall notify the Company forthwith) if:
- a) the Distributor has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Distributor or notice of intention to appoint an administrator is given by the Distributor or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Distributor or for the granting of an administration order in respect of the Distributor, or any proceedings are commenced relating to the insolvency or possible insolvency of the Distributor; or
  - b) the Distributor suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the

Company and the Distributor, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Distributor ceases to trade;

- c) the Distributor encumbers or in any way charges any of the Goods; or
  - d) the Distributor becomes subject to any proceedings equivalent to those set out in this clause 6.5 (a) or (b) under any local jurisdiction applicable to it.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The Distributor grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Distributor's right to possession has terminated, to recover them.
- 6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Distributor's right to possession has terminated, the Distributor shall be deemed to have sold all goods of the kind sold by the Company to the Distributor in the order in which they were invoiced to the Distributor.
- 6.9 On termination of the Contract, howsoever caused, the Company's (but not the Distributor's) rights contained in this Condition 6 shall remain in effect.

## **7. PRICE**

- 7.1 Unless otherwise agreed by the Company in writing, the price for the Goods and/or the Services shall be the price set out in the Company's price list as on the date of the Contract. The Company reserves the right to amend prices prior to the Contract being formed. The Company may, by giving notice to the Distributor at any time up to 7 calendar days before delivery, increase the price of the Goods and/or the Services reflect any increase in the cost of the Goods and/or the Services that are due to:
- a) any request made by the Distributor to change the delivery date(s), quantities or types of Goods ordered, or any changes to any specification supplied by the Distributor; or
  - b) any delay caused by any instructions of the Distributor or failure of the Distributor to give the Company adequate or accurate information or instructions.
- 7.2 The price for the Goods and/or the Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance,

all of which amounts (if applicable) the Distributor shall pay in addition when paying the price for the Goods.

## **8. PAYMENT**

8.1 Subject to Conditions 8.4 and 8.8, payment of the price for the Goods and/or the Services is due in pounds sterling on the 26th day of the month following the month in which the invoice is submitted to the Distributor. However the Company reserves the right to request payment in advance.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Distributor shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Distributor has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Distributor.

8.6 If the Distributor fails to pay the Company any sum due pursuant to the Contract, or alternatively fails to pay on the date due for payment, the Distributor shall be liable to pay a statutory interest to the Company in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

8.7 In the event that the Company agrees special payment terms with a Distributor and the Distributor fails to pay any amount due in accordance with such special payment terms on its due date all monies due or which may become due by the Distributor to the Company shall become immediately due and payable.

## **9. QUALITY**

9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Distributor the benefit of any warranty or guarantee given to the Company in respect of the Goods.

9.2 The Company warrants that (subject to the other provisions of these Conditions):

- a) the Goods and Services shall conform with any specification provided by the Distributor that is agreed between the Company and the Distributor; and
- b) it shall use reasonable care in performing the Services.

9.3 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 unless:

- a) the Distributor gives written notice of the defect to the Company, and:
  - i. if the Order is up to 20 units, and the defect in the Goods is as a result of damage in transit by the carrier (if applicable), within 1 Business Day of the time when delivery is deemed to have taken place as described in Condition 4.1 and if this damage is recorded on the delivery note when signing to accept the delivery; or
  - ii. if the Order is between 20 and 100 units, and the defect in the Goods is as a result of damage in transit by the carrier (if applicable), within 2 Business Days of the time when delivery is deemed to have taken place as described in Condition 4.1; or
  - iii. if the Order is above 100 units, and the defect in the Goods is as a result of damage in transit by the carrier (if applicable), within 3 Business Days of the time when delivery is deemed to have taken place as described in Condition 4.1;

and:

- b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Distributor (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

9.4 The Distributor shall not without with the Company's prior written consent give any warranties about the Goods' fitness and performance beyond those contained in the promotional material supplied by the Company.

9.5 The Company shall not be liable for a breach of the warranties provided in Condition 9.2 if:

- a) the Distributor makes any further use of such Goods after giving such notice in accordance with clause 9.3;
  - b) the defect arises because the Distributor failed to follow the Company's written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - c) the Distributor alters or repairs such Goods without the written consent of the Company;
  - d) the defect arises as a result of fair wear and tear;
- 9.6 Subject to Condition 9.3, if any of the Goods and/or the Services do not conform with the warranty provided in Condition 9.2 the Company shall at its option repair or replace such Goods (or the defective part thereof), or re-perform the Services or refund the price of such Goods at the pro rata Contract rate provided that (in the case of Goods), if the Company so requests, the Distributor shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.
- 9.7 If the Company complies with Condition 9.6 it shall have no further liability for a breach of any of the warranties in Condition 9.2 in respect of such Goods and/or the Services.
- 9.8 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period.

## **10. LIMITATION OF LIABILITY**

- 10.1 Subject to Condition 4, Condition 5 and Condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Distributor in respect of:
- a) any breach of these Conditions;
  - b) any use made or resale by the Distributor of any of the Goods, or of any product incorporating any of the Goods; and
  - c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 The terms implied by sections 13-15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions excludes or limits the liability of the Company:

- a) for death or personal injury caused by the Company's negligence; or
- b) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- d) defective products under the Consumer Protection Act 1987; or
- e) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- f) for fraud or fraudulent misrepresentation.

10.4 Subject to Condition 10.2 and Condition 10.3:

- a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price;
- b) the Company shall under no circumstances be liable to the Distributor for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10.5 This Condition 10 shall survive termination of the Contract.

## **11. ASSIGNMENT**

Neither party may assign the Contract or any part of it.

## **12. FORCE MAJEURE**

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Distributor (without liability to the Distributor) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without

limitation, acts of God, governmental actions, war (whether war be declared or not) or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials (a "**Force Majeure Event**"), provided that, if the event in question continues for a continuous period in excess of 180 days, the Distributor shall be entitled to give notice in writing to the Company to terminate the contract.

### **13. GENERAL**

- 13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Distributor shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any terms of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 13.7 The parties to the Contract shall attempt in good faith to resolve any dispute arising out of or relating to this Contract through negotiations between directors of the parties, who have authority to settle the same. If the matter is not resolved by negotiation within 30

days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators.

#### **14. DATA PROTECTION AND INTELLECTUAL PROPERTY RIGHTS**

- 14.1 Where the Company receives any personal data (as defined by the Data Protection Act 1998 (“the Act”)) from the Distributor, it shall ensure that it fully complies with the Act and only uses the data to fulfil its contractual obligations.
- 14.2 The Company shall indemnify the Distributor for any breach of the Act which renders the Distributor liable for any costs, claims or expenses.
- 14.3 Subject to any variation under Condition 14.1, the Distributor is responsible for maintaining the confidentiality of his account details including username and password. The Company shall not be held liable for any loss or damage which may arise as a result of the Distributor’s failure to protect his account details.
- 14.4 Information supplied by the Company’s website is to be used for the purpose of placing orders to the Company.
- 14.5 The content of the Company’s website is owned or licensed by the Company. This content includes, but is not limited to, photographs, images, layout, graphics and general appearance. This content is protected by copyright, trademark, database and other intellectual property rights and any such rights will remain vested in the Company or its licensors.
- 14.6 The Company shall defend, indemnify and hold harmless the Distributor and its related parties against third party claims (including, without limitation, reasonable attorney’s fees) arising out of or in connection with a claim that the Goods, when used within the scope of the Contract, infringes or misappropriates a third party copyright, trademark, patent, database or other intellectual property right, provided that the Company is notified promptly in writing of this claim, the Distributor has not reached a settlement of such claim or made any admissions in respect of the same, and the Company is given the option (at its expense) to control the action and all requested reasonable assistance to

defend the same. This is exclusive of any infringements arising out of the use of specifications or other relevant information provided by the Distributor.

## **15. COMMUNICATIONS**

15.1 All communications between the parties about the Contract shall be in writing and delivered by hand, sent by pre-paid first class post, sent by fax or sent by email:

- a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Distributor by the Company; or
- b) (in the case of the communications to the Distributor) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Distributor set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Distributor.

15.2 Communications shall be deemed to have been received:

- a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- b) if delivered by hand, on the day of delivery; or
- c) if sent by fax or email on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.

15.3 All correspondence will bear an account number and document number which is specific to each transaction.

15.4 Communications addressed to the Company shall be marked for the attention of a director of the Company.