

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

- 1.1.1 **“Applicable Law”** means any law, rule, policy, guidance, code of practice, code of conduct or recommendation issued by any governmental, statutory, regulatory or industry body which relates to the Company or the Customer, the Contract and/or the Goods and/or the Services and which is in force from time to time;
- 1.1.2 **“Business Day”** means a day other than a Saturday, Sunday or public or bank holiday in England and/or Wales;
- 1.1.3 **“Change in Control”** will occur in respect of a person (the **“relevant entity”**) where:
- 1.1.3.1 Control of the relevant entity is obtained (whether directly or as a result of obtaining Control of one or more other persons) by any person who did not at date of the Contract hold Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity; or
- 1.1.3.2 a person who has Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity at any time during the term of the Contract ceases to have Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity,
- 1.1.3.3 save that any such event will not constitute a Change in Control in respect of the relevant entity where its Parent (if any) before the relevant event remains its Parent after that event;
- 1.1.4 **“Charges”** means the charges payable by the Customer for the Goods and/or Services as set out in the Order;
- 1.1.5 **“Company”** means ChargePoint Technology Limited incorporated and registered in England and Wales with company number 6751239 whose registered office is at 58 Evans Road, Liverpool, L24 9PB;
- 1.1.6 **“Company Catalogues”** has the meaning given to it in Condition 13.1;
- 1.1.7 **“Company Materials”** has the meaning given to it in Condition 8.1.9;

- 1.1.8 **“Contract”** has the meaning given to it in Condition 2.6;
- 1.1.9 **“Control”** means in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise;
- 1.1.10 **“Customer”** means the person or company specified in the Order;
- 1.1.11 **“Customer Default”** has the meaning given to it in Condition 8.3;
- 1.1.12 **“Data Protection Legislation”** means all laws, rules, policies, guidance, codes of practice or recommendations issued by any governmental, statutory or regulatory body and any industry codes of conduct or guideline, in each case relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time in the UK;
- 1.1.13 **“Deliverables”** means any deliverables of the Services that the parties agree the Company will deliver to the Customer and as further specified in the Order;
- 1.1.14 **“Expenses”** has the meaning given to it in Condition 19.2.5;
- 1.1.15 **“Force Majeure Event”** has the meaning given to it in Condition 25.1;
- 1.1.16 **“Goods”** means any product ordered by the Customer from the Company or to be supplied by the Company to the Customer as further detailed in the Order;
- 1.1.17 **“Insolvent”** means a party is Insolvent where it:
 - 1.1.17.1 takes or any other person takes any step or action in connection with the appointment of an administrator in respect of it;
 - 1.1.17.2 takes any step in respect of obtaining a moratorium under Part A1 of the Insolvency Act 1986;
 - 1.1.17.3 gives notice under section 84 Insolvency Act 1986 of or proposes or passes a resolution for its winding up;
 - 1.1.17.4 has a winding up petition presented against it;
 - 1.1.17.5 has a receiver of any kind or provisional liquidator appointed;
 - 1.1.17.6 has a winding up order made by a court in respect of it;

- 1.1.17.7 proposes, makes or is subject to a company voluntary arrangement, a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement of any kind; or
- 1.1.17.8 ceases to trade;
- 1.1.18 **“Intellectual Property Rights”** means all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know-how, registered trade marks, comparable marks (EU), registered designs (including re-registered UK designs), utility models, unregistered design rights (including continuing unregistered designs and supplementary unregistered designs), unregistered trade marks, goodwill and rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitution;
- 1.1.19 **“Order”** means the Customer’s purchase order for the supply of Goods and/or Services by the Company
- 1.1.20 **“Order Acknowledgment”** means the Company’s acceptance of the Order in such form as the Company may specify from time to time;
- 1.1.21 **“Parent”** has the meaning set out in section 1162 Companies Act 2006;
- 1.1.22 **“Services”** means the services, including the Deliverables (if applicable), ordered by the Customer from the Company or to be supplied by the Company to the Customer as further detailed in the Order;
- 1.1.23 **“Services Specification”** means the description or specification for the Services provided by the Company to the Customer; and
- 1.1.24 **“VAT”** means value added tax as provided for in the Value Added Tax Act 1994 and any tax similar or equivalent to value added tax or performing a similar fiscal function;
- 1.2 references to any Conditions are to conditions of these Conditions;

- 1.3 all headings are for ease of reference only and will not affect the construction or interpretation of these Conditions;
- 1.4 unless the context otherwise requires:
 - 1.4.1 references to the singular include the plural and vice versa;
 - 1.4.2 references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.5 references to any legislation or legislative provision will include any subordinate legislation made under it and will be construed as references to such legislation, legislative provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted, restated and/or replaced and in force from time to time;
- 1.6 references to re-enactment of any legislation or legislative provision (including any subordinate legislation) include references to the preservation, continuation of effect, conversion or incorporation of any of them into the law of England and Wales, Scotland and Northern Ireland, whether by the European Union (Withdrawal) Act 2018 or any other legislation relating to the withdrawal of the United Kingdom from the European Union;
- 1.7 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.8 references to “in writing” or “written” include e-mail but not facsimile or other methods of electronic messaging; and
- 1.9 any reference to:
 - 1.9.1 time of day is to London time;
 - 1.9.2 a day is to a period of 24 hours running from midnight to midnight.

2. **CONDITIONS**

- 2.1 These Conditions shall form the basis of the contract for the sale of the Goods and / or the supply of the Services by the Company to the Customer. Notwithstanding anything to the contrary in the Customer’s standard conditions of purchase, these Conditions are the only

terms and conditions on which the Company will supply Goods and Services to the Customer and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing. No servant or agent of the Company has power to vary these Conditions verbally, or to make verbal representations or promises about the condition of the Goods and/or Services, their fitness for any purpose or any other matter whatsoever.

2.2 Except as provided in Condition 2.3, these Conditions shall apply in substitution of all previous terms and conditions upon which the Company and the Customer shall have carried on business.

2.3 In the event that the Company supplies any software to the Customer installed on or for use in connection with the Goods and / or Services, the use of such software will be subject to a separate licence agreement. The Company does not sell the software to the Customer and the Company (and, where applicable, its licensors) remains the owner(s) of the software at all times. By using the software the Customer agrees to the terms of the applicable licence agreement, details of which are available on the Company website (as updated by the Company from time to time).

2.4 **ORDER ACCEPTANCE**

2.5 Unless otherwise expressly stated in writing, all quotations and estimates by the Company are to be treated as an invitation for the Customer to place an Order to purchase Goods and / or Services. The Customer's Order is an offer to purchase the Goods and / or Services.

2.6 A legally binding contract will only be formed when the Company accepts the Order by issuing an Order Acknowledgment to the Customer (the "**Contract**").

2.7 For the avoidance of doubt, the Company is under no obligation to accept the Order. A confirmed Order may only be cancelled or varied with the Company's written consent. The giving of the Company's written consent shall not in any way prejudice the Company's right to recover from the Customer full compensation for any loss or expense arising from such cancellation or variation.

3. **DELIVERY OF GOODS**

3.1 Unless otherwise stated, all quotations and Order Acknowledgements issued by the Company are priced on an Ex-Works basis (as such term is interpreted in accordance with the meaning given in the Incoterms 2020 rules).

- 3.2 The Company will use reasonable endeavours to fulfil the Customer's delivery requirements for the Goods but no liability is accepted for a failure to deliver the Goods on such estimated delivery dates. Any delivery dates are subject to change by the Company giving the Customer written notice.
- 3.3 Time of delivery shall not be of the essence.
- 3.4 If delivery is delayed by strikes, lockouts, fire, accidents, defective materials, delays in receipt of raw materials or bought-in goods or components, or any other cause beyond the reasonable control of the Company a reasonable extension of the time for delivery shall be granted. The Customer will not be entitled to cancel the Contract or to reject any Goods by reason of a delay in delivery or failure to deliver.
- 3.5 If the Customer fails to take delivery on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for despatch the Company shall be entitled to:
- 3.5.1 store or arrange for storage and insure the Goods until the Customer accepts delivery of them or they are disposed of under Condition 3.5.2 (as applicable) and to take such action as it considers necessary to attempt to re-deliver the Goods to the address specified in the Order;
 - 3.5.2 following written notice to the Customer, treat the Contract as repudiated by the Customer and dispose of the Goods in any way it sees fit, including by sale to another person. If the Company sells any of the Goods under this Condition 3.5.2 at a price which is less than the relevant Charges plus any relevant packaging, insurance, carriage and delivery costs, the Company will be entitled to charge the Customer for the shortfall; and
 - 3.5.3 charge the Customer the reasonable costs and expenses which the Company incurs under Conditions 3.5.1 and 3.5.2.

4. **DEFECTIVE GOODS**

- 4.1 The Customer shall carry out a thorough inspection of the Goods within five (5) Business Days after their delivery and shall give written notification to the Company before expiry of the inspection period of any defects which a reasonable examination would have revealed. In the case of latent defects, the Customer shall give not less than ten (10) Business Days' written notification of any such defects in the Goods within the twelve (12) month period from the date of delivery of the Goods.

- 4.2 If there is any defect in the Goods, the Customer will: (i) at the Company's option either return to the Company the relevant Goods or permit the Company or its agent or sub-contractor to inspect them at the Customer's premises; (ii) provide to the Company all information and assistance which the Company requires to investigate the alleged defect; and (iii) not use the relevant Goods after becoming aware of the defect.
- 4.3 Subject to Conditions 4.1, 4.2 and 4.4, the Company will repair or replace (at its option) the defective Goods or any defective components in the Goods. Such repair or replacement shall be the Customer's sole remedy in respect of any claim it has under Condition 4.1. The liability of the Company under Condition 4.1 shall be limited to the invoice value of the components replaced or repaired and the Company shall not be liable for any consequential loss or damage howsoever caused. It shall be the duty of the Customer to insure against such consequential loss and to hold the Company harmless.
- 4.4 The Company's obligations under Condition 4.3 shall expire immediately following the expiry of twelve (12) months from the date of delivery of the Goods.
- 4.5 Subject to Conditions 17.1 and 17.3, the Company will not have any liability or obligations under Condition 4.3 if:
 - 4.5.1 notice of the breach was not given to the Company in accordance with the relevant timescale as set out in Condition 4.1;
 - 4.5.2 the Customer does not comply with any of its obligations at Condition 4.2 in respect of the breach;
 - 4.5.3 the breach was drawn to the Customer's attention before formation of the Contract or the Goods were examined by the Customer before formation of the Contract and the examination ought to have revealed the breach; or
 - 4.5.4 the period under Condition 4.4 has expired.
- 4.6 The Company's obligations under Condition 4.1 does not cover consumable items including (but not limited to) gaskets, seats, seals, filters.
- 4.7 The Company shall be under no liability in respect of any defect in the Goods arising as a result of or in connection with any drawing, design or specification supplied by the Customer.
- 4.8 The Company shall be under no liability in respect of any defect arising from:
 - 4.8.1 a defect in a Good caused by damage in transit after Delivery;

- 4.8.2 fair wear and tear;
 - 4.8.3 wilful damage by, or negligence of, the Customer or any of its agents, employees or contractors;
 - 4.8.4 failure to follow the Company's instructions (whether oral or in writing);
 - 4.8.5 any defect in any other product or service which the Goods are used in conjunction with but which has not been supplied by the Company; or
 - 4.8.6 misuse, handling, alteration, installation, repair, maintenance or storage of the Goods without the Company's approval.
- 4.9 The Company shall be under no liability under the above warranty or for any other warranty, condition or guarantees if the total Charges for the relevant Goods have not been paid by the due date for payment.

5. **GOODS LOST / DAMAGED IN TRANSIT / OR SHORT DELIVERED**

- 5.1 Where the Company is responsible for delivery of the Goods (interpreted in accordance with the meaning given in Incoterms 2020 Rules), the Customer shall note any claim for short delivery and/or for damage to Goods which have been delivered to the Customer at the time of delivery and shall confirm such claims in writing to the Company's head-office within three (3) Business Days from the date of delivery. If short delivery does take place, the Customer undertakes not to reject the Goods but to accept the Goods delivered as a part performance of the Contract. Where the Customer is responsible for delivery of the Goods (interpreted in accordance with the meaning given in Incoterms 2020 Rules), the Company accepts no responsibility for short delivery and/or for damage to Goods incurred following collection of the Goods from the Company's premises.
- 5.2 The Company will only replace the Goods lost or damaged in transit provided that the Customer has acted in accordance with Condition 5.1.

6. **RETURN OF GOODS FOR CREDIT**

- 6.1 The Company will not accept Goods returned for credit unless previously agreed in writing by the Company and the Customer has provided full details of the Goods and a copy of the invoice to which they relate.
- 6.2 The Company reserves the right to refuse to accept any Goods which are not in their original condition and packaging.

6.3 If Goods are returned for credit without any prior agreement in writing with the Company as provided for in Condition 6.1, the Company will not be obliged to accept the Goods and the Customer will be liable for any damage caused to the Goods or loss suffered while the Goods are in the possession of the Company.

7. **SUPPLY OF SERVICES**

7.1 The Company shall supply the Services to the Customer in accordance with the Services Specification in all material respects.

7.2 The Company shall use all reasonable endeavours to meet any performance dates for the Services agreed with the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Company reserves the right to amend the Services Specification, if necessary, to comply with any Applicable Law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.

7.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

8. **CUSTOMER'S OBLIGATIONS**

8.1 The Customer shall:

8.1.1 ensure that the terms of the Order to purchase Goods and/or Services, and any information it provides in the Services Specification, are complete and accurate;

8.1.2 co-operate with the Company in all matters relating to the Goods and/or Services;

8.1.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to deliver the Goods and/or provide the Services;

8.1.4 provide the Company with such information and materials as the Company may reasonably require in order to provide the Goods and/or supply the Services, and ensure that such information is complete and accurate in all material respects;

- 8.1.5 prepare the Customer's premises for the supply of the Services, including ensuring that any equipment upon which the Services are to be performed is clean, fully operational and compatible with the Services;
 - 8.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Customer to receive and use the Services before the date on which the Services are to start;
 - 8.1.7 comply with all Applicable Law, including health and safety laws in respect of use of the Goods and/or Services;
 - 8.1.8 promptly give written notice to the Company of any dispute it is involved in and any claim or complaint made against it in respect of Goods and/or Services;
 - 8.1.9 keep all materials, equipment, documents and other property of the Company ("**Company Materials**") at the Customer's premises in safe custody at its own risk, insure and maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and
 - 8.1.10 comply with any additional obligations as set out in the Order and Services Specification.
- 8.2 The Customer will comply with the Company's instructions and provide such cooperation and assistance as the Company may request in connection with:
- 8.2.1 any product recall initiated by or involving the Company relating to Goods;
 - 8.2.2 any other corrective action initiated by or involving the Company to address actual or potential defects, safety or compliance issues relating to Goods; or
 - 8.2.3 any notification to and/or investigation by a regulatory authority concerning actual or potential defects, safety or compliance issues relating to Goods.
- 8.3 If the Company's performance of any of its obligations under the Contract is hindered, prevented or delayed by:
- 8.3.1 any act or omission by the Customer;
 - 8.3.2 failure by the Customer to perform any relevant obligation;

8.3.3 the Company relying on any incomplete or inaccurate data provided by a third party; or

8.3.4 the Company complying with any instruction or request by the Customer or one of its employees

(each a “**Customer Default**”):

8.3.4.1 without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;

8.3.4.2 the Company shall not be in breach of the Contract and/or liable for any damages, costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this Condition 8; and

8.3.4.3 the Customer shall reimburse the Company on written demand for any loss, damage, costs or expenses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

9. **CONFIDENTIAL INFORMATION**

9.1 For the purposes of this Condition 9, “**Confidential Information**” means:

9.1.1 any information (whether written, oral, in electronic form or in any other media) that is disclosed in connection with the Contract by or on behalf of the Company (or one of the Company's representatives) to the Customer or any of the Customer's representatives whether before, on or after the date of the Contract and that relates (in whole or in part) to the Company or any of the Company's group of companies or its (or their) businesses;

9.1.2 the terms of or subject matter of the Contract or any discussions or documents in relation to any of them (including heads of terms);

9.1.3 any trade secret (as that term is defined in regulation 2 of the Trade Secrets (Enforcement, etc) Regulations 2018) where the Company or any of the Company's group of companies is the trade secret holder,

but excluding information that is trivial or by its nature immaterial.

9.2 The Customer shall not copy, reproduce or disclose Confidential Information to any third party or use it for any purpose other than for the purpose of the Contract without the Company's written consent, unless and until the same is public knowledge or comes into the Customer's possession bona fide from a third party. The Customer will keep the Confidential Information safe and secure and apply to it documentary and electronic security measures that match or exceed those the Customer operates in relation to its own confidential information and will never exercise less than reasonable care.

9.3 The Customer acknowledges and agrees that damages alone would not be an adequate remedy for breach of this Condition 9 by the Customer. The Company will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of this Condition 9 by the Customer. Customer acknowledges that the Company (or any of its group companies) will be entitled to all remedies of a trade secret holder under and referred to in the Trade Secrets (Enforcement, etc.) Regulations 2018 where any Confidential Information of the Company (or any of its group companies) is a trade secret under those Regulations.

10. **COST VARIATION**

All quotations and estimates issued by the Company are, unless otherwise stated, based on current cost of production including (but not limited to) materials, hours and wages and are subject to amendment by the Company at any time during the term of the Contract to meet any recognised increase in such cost or any additional costs which arise as a consequence of: (i) any change in law; (ii) any variation in the Customer's requirements for the Goods and/or Services; (iii) any information provided by the Customer being inaccurate; or (iv) incomplete or any failure or delay by the Customer in providing information.

11. **TAXES OR LEVIES**

11.1 The Customer will be responsible for paying VAT and other sales and local taxes in respect of the Goods and/or Services.

11.2 Without prejudice to Condition 11.1, the Customer will be the importer of record for the purposes of and shall be responsible for and pay all import VAT, customs and import duties, taxes, charges, fees, imposts and tariffs where relevant in consequence of the importation of such Goods and for all associated documentation. The Customer will also be responsible for

compliance with all intra-Community movements within EU countries and interstate reporting where applicable.

12. DESIGN

12.1 It is the Customer's responsibility to ensure that all necessary approvals (including those required by Applicable Law) for the Goods have been granted before manufacture of the Goods commences. The Company will assist in supplying design work and calculations for the Goods when requested to do so, provided that no design work or calculations will be issued prior to the placing of an Order by the Customer and acceptance of such Order in accordance with Condition 2.4. An additional charge will be payable by the Customer for any design work or calculations required over and above those normally supplied by the Company in the ordinary course of providing Goods and/or Services (as further set out in the Order).

12.2 It is the Customer's responsibility to satisfy itself that the design work, calculations and specifications provided by the Company are correct. No responsibility for inaccuracies, errors or omissions will be accepted by the Company once the Customer has approved details submitted. In any event the Company's responsibility is solely confined to its own manufactured components and does not extend to other products or components or overall structural or architectural considerations.

13. TECHNICAL SPECIFICATIONS, CATALOGUES ETC

13.1 All descriptions, technical specifications, design work drawings, imagery, illustrations given in catalogues or other literature issued by the Company (including any material made available on the Company's website) ("**Company Catalogues**"), while given in good faith, shall not form part of the Contract unless specifically incorporated into the Contract by virtue of an Order and the Company accepts no liability for minor variations.

13.2 The Company Catalogues shall remain the sole and exclusive property of the Company and all Intellectual Property Rights in the same remains vested in the Company. The Customer shall not acquire or have any rights to any Intellectual Property Rights in the Company Catalogues.

14. REPRESENTATIONS, ADVICE AND EXCLUSION OF IMPLIED TERMS

14.1 The rights, obligations and liabilities of the parties under these Conditions shall be in lieu of any warranty, condition implied by common law or by statute into a contract for the sale of products or services.

14.2 No warranty is given that products or services are suitable or sufficient for any specific purpose unless such purpose is defined in the Contract and expressly accepted by the Company in writing.

14.3 Advice given or representations made by the Company, its employees or agents are given and made without liability or otherwise unless the Company agrees in writing to provide technical advice in return for a specific fee, in which case the liability of the Company, its employees and agents shall be limited to the amount of the fee received for such work.

15. **DATA PROTECTION**

16. The parties will comply with their obligations under the Data Protection Legislation to the extent they receive and/or process any personal data under the Contract.

17. **LIMITATION AND LIABILITY**

17.1 Unless otherwise expressly provided in the Contract and subject to Condition 17.3, the Company's maximum aggregate liability to the Customer under this Contract (whether in contract, tort, negligence, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of its obligations under the Contract) shall not exceed an amount equal to the total Charges paid and/or payable by the Customer to the Company for the Goods and/or Services under the Contract.

17.2 The Company shall have no liability to the Customer for any: loss of profits, reputation and/or goodwill, pure economic losses, special damages, aggravated, punitive and/or exemplary damages, consequential and/or indirect losses and/or interruption of business, loss or damage to data, loss of business, revenue, bargain, anticipated savings, contracts and/or opportunity.

17.3 Nothing in these Conditions shall exclude or limit the Company's liability for death or personal injury caused by its own negligence by operation of Section 2(1) Unfair Contract Terms Act 1977, any liability for fraud or fraudulent misrepresentation, for breach of its obligations arising under section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982 or any other liability which the Company is not permitted to exclude or limit as a matter of law.

17.4 The Parties agree that they have negotiated this Condition 17, they are of comparable bargaining power and the allocation of risk in this Condition 17 is a fair and equitable position.

17.5 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.

18. CUSTOMER INDEMNITY

18.1 The Customer shall indemnify and hold harmless the Company and its employees and agents against any claim made against, or any loss, cost (including any legal and professional costs incurred), damage, injury or expense suffered by the Company or its employees or agents:

18.1.1 howsoever arising on the Customer's site or any site to which delivery is made or on which services are provided at the request of the Customer;

18.1.2 caused or contributed to by the negligence of the Customer, its employees or other persons for whom the Customer is responsible;

18.1.3 arising out of any breach by the Customer or any liability of the Customer under the Contract or these Conditions, save in any case, to the extent directly caused by the negligence of the Company, its employees or agents; or

18.1.4 arising out of any breach of the Customer's obligations under Condition 18.

19. TERMS OF SALE AND PAYMENT

19.1 Payment for the Goods shall become due within thirty (30) days from the date the Company issues the invoice unless different terms are stated in the Company's Order Acknowledgment.

19.2 Unless the Company and the Customer agree a fixed fee for the Services (as detailed in the Order):

19.2.1 the Charges for the Services shall be on a time and material basis:

19.2.2 the Charges shall be calculated in accordance with the Company's daily fee rates, as set out in the Order;

19.2.3 the Company's daily fee rates for each individual person are calculated on the basis of a seven-and-a-half-hour day between 8.00 am to 4.30 pm worked on Business Days;

19.2.4 unless agreed otherwise between the parties, the Company shall be entitled to charge an overtime rate of 120% of the daily fee rate on a pro-rata basis for each

part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in Condition 19.2.3; and

- 19.2.5 the Company shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Company engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses (including administration expenses), and for the cost of services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials (“**Expenses**”).
- 19.3 The Company will invoice the Customer for the Charges for the Services in accordance with the terms of the Order. Any Expenses will be invoiced by the Company following the end of the month in which they were incurred by the Company.
- 19.4 All payments will be made in the currency specified in the Order Acknowledgement, in available cleared funds by electronic transfer to the bank account as the Company may nominate from time to time. Notwithstanding any purported contrary appropriation by the Customer, the Company will be entitled, by giving written notice to the Customer, to appropriate any payment by the Customer to any invoice issued by the Company.
- 19.5 Time will be of the essence in respect of the timescales for payment of invoices under this Condition 19.
- 19.6 The consideration for any supply made under the Contract is exclusive of any VAT which is due in relation to such supply, which will be payable in addition to that consideration in the manner and at the rate prescribed by law from time to time.
- 19.7 Where payment is not made by the due date and without prejudice to any other rights or remedies which the Company may have arising from non-payments:
- 19.7.1 the Company may charge interest on any overdue amount at the rate of 2% above Barclays Bank plc Base Rate, calculated on a day to day balance basis until the Company receives payment;
- 19.7.2 the Company may treat any or all other agreements between the Company and the Customer as repudiated without prejudice to any other remedies the Company may have against the Customer; and
- 19.7.3 the Company will be entitled to withhold further deliveries of Goods and to suspend provision of the Services and refuse to carry out any other work or supply any other Goods and/or Services to the Customer until all payments due or deemed due to the Company have been paid in full.

19.8 Save as otherwise expressly provided in these Conditions or required by law, all payments to be made by the Customer to the Company under the Contract will be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.

19.9 Following expiry or termination of the Contract:

19.9.1 the Company will be entitled to invoice all Charges and any and Expenses incurred which have not yet been invoiced; and

19.9.2 all invoices (including any invoices issued under Condition 19.9.1) will become immediately due and payable by the Customer.

20. RISK AND TITLE

20.1 Unless otherwise specified in the Customer's Order or the Company's Order Acknowledgment, risk in the Goods and damage to or loss or accidental deterioration or destruction of the Goods shall pass to the Customer in accordance with Ex-Works (interpreted in accordance with the meaning given in Incoterms 2020 Rules) and the Customer shall insure against such risk.

20.2 Goods supplied by the Company to the Customer shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the Customer shall have paid to the Company all sums due in respect of the Goods and Services supplied with such Goods and all other sums which are or which become due to the Company from the Customer on any account whatsoever.

20.3 Until ownership of the Goods has passed to the Customer under Condition 20.2:

20.3.1 the Customer shall:

20.3.1.1 hold the Goods as the Company's fiduciary agent and bailee;

20.3.1.2 properly (at the Customer's cost) protect the Goods as the Company's property and store the Goods separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

20.3.1.3 maintain the Goods in satisfactory condition; and

20.3.1.4 keep the Goods insured for their full price against damage or loss on an "all risks" basis with insurers approved by the Company, (acting reasonably), ensure that the Company's interest in them is

noted on the relevant insurance policy and that the Company is named as loss payee in respect of the Goods, whenever requested by the Company produce a copy of the policy of insurance in respect of the Goods to the Company, do nothing and not omit to do anything which in consequence permits any insurer to refuse to indemnify the Customer in full in accordance with the terms of any insurance policy maintained in respect of the Goods in respect of any claim made under any such insurance policy and ensure that any insurance proceeds received by the Customer under the relevant policy are applied to repairing damaged Goods or, in the event that they are not so applied, hold such proceeds on trust for the Company.

- 20.4 Subject to Condition 18, the Customer shall be entitled to resell or use the Goods in the ordinary course of its business and shall receive as trustee for and account to the Company in respect of any proceeds of sale or otherwise of the Goods including insurance proceeds whether tangible or intangible provided that:
- 20.4.1 the Company may require the Customer to deliver up to the Company any of the Goods which are still in existence and have not been resold and if the Customer fails to do so forthwith the Company, its employees or agents, may enter on the premises of the Customer or any third party where the Goods are stored and repossess the Goods; and
 - 20.4.2 the Company may at any time during normal business hours enter the premises of the Customer to determine the whereabouts of the Goods and the Customer's compliance with the provisions of these Conditions.
- 20.5 If the Customer resells the Goods under Condition 20.4, legal and beneficial ownership of Goods will pass to the Customer immediately prior to the Customer entering into a binding contract for the sale of those Goods.
- 20.6 The Customer's right to possession, use, consumption and resale of the Goods will terminate immediately if, before ownership of the Goods passes to the Customer in accordance with Conditions 20.2 or 20.5:
- 20.6.1 the Customer becomes Insolvent;
 - 20.6.2 the Customer fails to pay any sum due to the Company on or before the due date;
 - 20.6.3 the Customer encumbers or in any way charges any of the Goods; or

- 20.6.4 the Contract expires or terminates for any reason.
- 20.7 If the Customer's right to possession, use, consumption and resale of the Goods terminates in accordance with Condition 20.6, the Company will be entitled to issue the Customer with a credit note for all or any part of the price of the Goods together with VAT on such price.
- 20.8 The Customer grants, and will procure that the owner of any third party premises grants, the Company, its agents, employees and sub-contractors 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 Customer's right to possession, use and resale has terminated, to recover them.

21. EXPORT CONTROLS AND SANCTIONS

- 21.1 The Customer irrevocably warrants, represents, undertakes and guarantees that:
- 21.1.1 it is not a Sanctioned Person;
- 21.1.2 it has not engaged in any transaction or conduct that could result in it becoming a Sanctioned Person;
- 21.1.3 it is not engaging in and has not engaged in any transaction that circumvents or has the purpose of circumvention of any Sanctions;
- 21.1.4 it has not been and is not subject to any claim, proceeding, formal notice or investigation with respect to any Sanction or Export Law;
- 21.1.5 the transactions contemplated by the Contract will not directly or indirectly involve a Sanctioned Person or any country which is (or whose government is) the subject of any Sanction;
- 21.1.6 it has provided all information of which it is aware that the Company reasonably requires in order for the Company to assess and manage the risk of Sanctions being imposed on the Company and to enable the Company to comply with all laws or regulations applying in the jurisdictions in which the Goods and/or Services are supplied or delivered, the parties to the Contract are located or in which any element of the Contract is to be performed; and
- 21.1.7 there are no pending or threatened claims, proceedings, formal notices or investigations against or involving the Customer or any of its group companies in respect of any Export Laws or Licences.

21.2 The Customer will not sell, assign, dispose of or otherwise transfer any of the Goods and/or Services to any Sanctioned Person.

21.3 The Customer will at all times during the Contract:

21.3.1 comply with any Sanction or Export Law;

21.3.2 ensure that it has in place appropriate controls and safeguards to prevent any action being taken by it or by any user of the Goods and/or Services that would amount to or result in a breach of or non-compliance with any Sanction or Export Law; and

21.3.3 comply with all Export Laws in relation to the supply of the Goods and the performance of the Services.

21.4 If at any time during the Contract:

21.4.1 the Customer becomes or any of its officers, employees, agents or subcontractors becomes a Sanctioned Person or it is aware that it or any of its officers, employees, agents or subcontractors is likely to become a Sanctioned Person;

21.4.2 the Customer becomes subject to any claim, proceeding, formal notice or investigation with respect to any Sanction;

21.4.3 a breach, or suspected breach, of any of the Customer's obligations under Conditions 21.2 or 21.3 occurs; or

21.4.4 the Customer becomes aware of a breach of any of the warranties set out in Condition 21.1,

the Customer will immediately notify the Company in writing of the relevant fact, circumstance or breach in reasonable detail, including the identity of the third party purchaser, the date of the resale, the quantity of Goods resold and any further details requested by the Company.

21.5 In the event that the Customer breaches Conditions 21.1, 21.2, 21.3 or 21.4:

21.5.1 the Company shall be entitled to withhold the supply of any undelivered Goods, under the Contract to which the breach relates or any other contract made between the Company and the Customer, to the Customer; and

- 21.5.2 the Customer will indemnify the Company and its employees and agents against any claim made against, or any loss, cost (including any legal and professional costs incurred), damage, injury or expense suffered by the Company or its employees or agents as a result of any breach of Conditions 21.1, 21.2, 21.3 or 21.4.
- 21.6 The Parties acknowledge and agree that:
- 21.6.1 if any Sanctions or ban, control or other restriction under Export Law is imposed or introduced after the date of the Contract, irrespective of whether that imposition or introduction is a Force Majeure Event, then the Company will not be liable to the Customer for any loss (whether direct or indirect), damage, costs or expenses arising out of or relating to any delay or failure by the Company to perform any of its obligations under the Contract if such delay or failure is a result of any action taken by the Company which the Company believes in its sole discretion to be necessary or desirable in order to comply with any Sanctions and Export Law;
- 21.6.2 where the Customer has made payment for all or part of the Goods and/or Services under the Contract and the Company is prevented from receiving or accessing (or is otherwise not permitted to receive or access) that payment as a result of the Customer or any of its group companies being or becoming a Sanctioned Person or being in breach of any Sanction or Export Law, that payment is not to be taken to have been validly made by the Customer in accordance with and for the purposes of the Contract and accordingly the Company will be:
- 21.6.2.1 relieved of its obligations to supply the Goods and/or Services (or any part of them);
- 21.6.2.2 entitled to exercise any rights of termination (whether arising under the Contract or otherwise); and
- 21.6.2.3 entitled to recover from the Customer any loss or expense incurred by it or any member of the Company's group as a result of that prevention or inability to receive or access such payment.
- 21.7 Any breach of Conditions 21.1 to 21.5 by the Customer will be a material breach of the Contract which is not capable of being remedied, irrespective of whether any financial loss or reputational damage arises and irrespective of the level of any financial loss or deprivation of benefit arising as a consequence of such breach.

22. ANTI-BRIBERY AND CORRUPTION

Both Parties shall comply with all Applicable Law relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010. Each party shall have in place policies and procedures including but not limited to adequate procedures (as defined in the Bribery Act 2010) in their businesses to prevent bribery occurring and to ensure compliance with this Condition 22.

23. TERMINATION

23.1 Either party may immediately terminate the Contract by giving prior written notice if the other party:

23.1.1 commits a material breach of the Contract which is incapable of remedy or, in the case of a breach capable of being remedied, has not been remedied within thirty (30) days of receiving notice requiring it to be remedied;

23.1.2 becomes Insolvent. A party will notify the other party immediately upon becoming Insolvent.

23.2 The Company may immediately terminate the Contract if:

23.2.1 the Customer fails to make any payments due under the Contract by the due date for payment;

23.2.2 the Customer undergoes a Change in Control without the Company's written consent;

23.2.3 the Customer is in breach of any of Conditions 21.1 to 21.5; or

23.2.4 the Customer is in breach of Condition 22.

23.3 If the Company has the right to terminate the Contract under Conditions 23.1 and/or 23.2:

23.3.1 the Company may withhold delivery of any undelivered Goods and stop any Goods in transit;

23.3.2 the Company may terminate the Customer's right to re-sell and retain possession of any of the Goods owned by the Company;

23.3.3 the Company may enter the Customer's premises or any other premises where the Goods are or may be stored and may repossess and sell or dispose of any

Goods owned by the Company to discharge any sums owed by the Customer to the Company under the Contract or any other agreement with the Customer;

23.3.4 the Company may immediately suspend the provision of any Services; and

23.3.5 all monies owed by the Customer to the Company (including all outstanding Charges, any third party costs the Company is required to pay and any work-in-progress costs in respect of any Goods and/or Services) shall immediately become due and payable.

23.4 On termination of the Contract:

23.4.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices together with all interest on such unpaid sums and, in respect of Services and Goods supplied for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;

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

23.4.3 the Customer shall:

23.4.3.1 cease to use the Company's Confidential Information;

23.4.3.2 if requested to do so, return all of the Company's Confidential Information (including all copies and extracts) in its possession or control; and

23.4.3.3 if requested to do so, destroy or permanently erase (if technically feasible) all documents and all records (in any media) created by it or on its behalf that use, concern or are based on any of the Company's Confidential Information.

23.5 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

23.6 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

24. **STATUTORY OBLIGATIONS AND CONSENTS**

24.1 The Customer shall be responsible for obtaining all necessary consents and approvals and for conducting its business and using the Goods in accordance with all Applicable Law whether applicable to the jurisdiction of the Company or the Customer's manufacturing, processing or storage site locations, in connection with the Goods supplied, equipment provided to the Customer and/or Services performed on the Customer's site.

24.2 The Customer's attention is drawn to the fact that statutory regulations and recognised codes of sale practice may cover the storage, handling, conveyance and use of products supplied by the Company.

25. **FORCE MAJEURE**

25.1 The Company shall not be in breach of the Contract or otherwise liable to the Customer for any failure to perform or delay in performing its obligations under the Contract to the extent that and for so long as such failure or delay is due to strike, lock-out, industrial dispute, breakdown of plant, transport or equipment, epidemics and/or pandemics (or any other outbreak of disease where such outbreak is designated as a serious threat to public health) or as a result of any other event or circumstance beyond the Company's reasonable control ("**Force Majeure Event**").

25.2 The Company will not be in breach of the Contract or otherwise liable to the Customer for any failure to perform or delay in performing its obligations under the Contract to the extent that this is due to a Force Majeure Event affecting the Customer or the Customer's failure to perform or delay in performing any of its obligations under any Contract.

25.3 The Customer will continue to pay the Company's invoices in accordance with Condition 19 in respect of any Goods and/or Services which the Company continues to supply notwithstanding the occurrence of the Force Majeure Event.

26. **THIRD PARTY CONTRACTS**

None of the terms and conditions of the Contract shall be enforceable by any person who is not a party to it. This shall not apply to any company within the same group of companies as the Company who the Company consents to being able to enforce the Contract in addition to the Company. The rights of any third party to enforce the Contract may be varied and/or extinguished by agreement between the parties without the consent of any third party.

27. NOTICES

27.1 **Any notice given under or in connection with the Contract will be in the English language and:**

27.1.1 **sent to the relevant party's address by pre-paid first class post or mail delivery service providing proof of delivery;**

27.1.2 **delivered to or left at the relevant party's address (but not, in either case, by one of the methods set out in Condition 27.1.1) ; or**

27.1.3 **sent by e-mail to that party's e-mail address**

and, in the case of any notice to be given to the Company, marked for the attention of the specified representative of the Company. The address, e-mail address and representative for each party are those detailed in the Order, and may be changed by the relevant party giving written notice in accordance with this Condition.

27.2 Any notice given in accordance with Condition 27.1 will be deemed to have been served:

27.2.1 if given by first class post or mail delivery service, in each case as set out in Condition 27.1.1, at 9.00 a.m. on the second Business Day after the date of posting;

27.2.2 if given as set out in Condition 27.1.2, at the time the notice is delivered to or left at that party's address; and

27.2.3 if given as set out in Condition 27.1.3, at the time of sending the e-mail;

provided that if a notice is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.

27.3 This Condition 27 will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

28. GENERAL

28.1 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will

continue in full force and effect. This Condition 28.1 will not apply to a term which ceases to have effect under Section 233A, 233B or 372A Insolvency Act 1986. The Customer agrees that where any term ceases to have effect under any of those sections because it is subject to an insolvency procedure as referred to in any of those Sections, if that insolvency procedure comes to an end without the Customer becoming subject to a further such insolvency procedure, such term will be deemed once again to have effect in accordance with its terms.

- 28.2 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.
- 28.3 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in the Contract. Nothing in this Condition 28.3 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
- 28.4 The Customer shall not assign, sub-contract, delegate, transfer or dispose of the Contract and/or any of its rights or obligations under it without prior written consent of the Company.
- 28.5 No variation to the Contract will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the parties.
- 28.6 Nothing in the Contract and no action taken by the parties in connection with it or them will create a partnership or joint venture between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.
- 28.7 Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.
- 28.8 The parties may vary or rescind the Contract without the consent of the Company's employees, agents or sub-contractors.
- 28.9 The Company's rights and remedies set out in these Conditions are in addition to and not exclusive of any rights and remedies provided by law.

29. **GOVERNING LAW AND JURISDICTION**

29.1 These Conditions, the Contract and any non-contractual obligations arising out of or in connection with them shall be governed by the laws of England and Wales.

29.2 The courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations)

29.3 The parties waive any objection to, and agree to submit to, the exclusive jurisdiction of the Courts of England and Wales. Each party agrees that a judgment or order of any such court is binding upon it and may be enforced against it in the courts of any other jurisdiction.