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FORT VALE ENGINEERING LIMITED

CONDITIONS OF SALE: FV7 DATED 1st December 2021

1 INTERPRETATION

1.1 In these Conditions:-

- Brexit Trigger Event** an event as described in clause 14.2;
- Business Day** a day (other than Saturday, Sunday or public holiday) when banks in London are open for business;
- Buyer/You/Your** the person or company who purchases the Goods from the Company;
- Company/We/Us/Our** Fort Vale Engineering Limited (registered in England and Wales with company number 00902920) with registered address at Calder Vale Park, Simonstone Lane, Simonstone, Burnley BB12 7ND;
- Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- and
- (f) collapse of buildings, fire, explosion or accident.
- Goods** are the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions;
- Group** in relation to the Company, that company, any subsidiary or holding company from time to time of the Company, and any subsidiary from time to time of a holding company of the Company.
- Conditions** are these terms and conditions of sale and (unless the context otherwise requires) includes any special terms and conditions on the face of the Company's quotation or written acceptance of the Buyer's order (as the case may be);
- Contract** means the contract between the Company and the Buyer for the sale and purchase of the Goods in accordance with these Conditions;

Fort Vale Engineering Ltd. Calder Vale Park Simonstone Lane Simonstone Burnley Lancashire BB12 7ND UK
Tel: +44 (0)1282 687100 Fax: +44 (0)1282 687110 sales@fortvale.com www.fortvale.com

Directors: E S Fort OBE (Founder & Chairman), I Wilson (Managing), E M Drury (Group Financial), S Laycock (General Manager), S Hendleman (Financial), D Bailey (Design), P Staveley (Quality), A Bryce (Innovation), G Blanchard (Sales & Marketing). Registered in England No: 902920. Registered Office as above.



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In Writing	shall refer to communication by letter, facsimile and electronic mail;
Order	the Buyer's order for the Goods either online via the Webshop or as set out in the Buyer's purchase order form or the Buyer's written acceptance of the Company's quotation;
Specification	any specification for the Goods provided by the Buyer, including any related plans and drawings that is agreed in writing by Company.
Webshop	For sales in the UK www.shop.fortvale.com/en/ and for sales in the EU www.shop.fortvale.com/eu/

1.2 Headings are for convenience only and do not affect interpretation.

1.3 In these Conditions, references made to the masculine include the feminine and the neuter and references made to the singular include the plural and vice versa, as the context admits or requires.

1.4 Any references in these Conditions to any provisions of a statute shall be construed as a reference to that provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2 BASIS OF THE CONTRACT

2.1 We are a company registered in England and Wales and our registered office is at Calder Vale Park Simonstone Lane, Simonstone, Burnley, Lancashire, BB12 7ND. Our VAT number is GB 174 3134 77. We operate the website <https://www.fortvale.com/>.

2.2 To contact us telephone our customer service team at +44(0)1282 687120 or email sales@fortvale.com. How to give us formal notice of any matter under the Contract is set out in clause 19.2

2.3 All Goods are sold subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions that the Buyer seeks to impose or incorporate, whether contained in the Order or howsoever otherwise, or which are implied by trade, custom and practice or course of dealing. No variation to these Conditions shall be binding unless agreed in writing by a director of the Company.

2.4 The order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate and for giving the Company any necessary information within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

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- 2.5 Our online order process via the Webshop allows you to check and amend any errors before submitting your Order to us. Please check the Order carefully before confirming it. You are responsible for ensuring that your Order is complete and accurate.
- 2.6 After you place an Order, you will receive an email from us acknowledging that we have received it, but please note that this does not mean that your Order has been accepted. Our acceptance of your Order will take place as described in clause 2.7.
- 2.7 Our acceptance of your Order takes place when we send the email to you to accept it, at which point the Contract between you and us will come into existence
- 2.8 If the Company are unable to supply the Buyer with the Goods for any reason, the Company will inform the Buyer of this In Writing and the Company will not process an Order. If the Buyer has already paid for the Goods, the Company will refund to the Buyer the full amount including any delivery costs charged as soon as possible.
- 2.9 The quantity and description of and any Specification for the Goods shall be those set out in or expressly referred to in the Company's acceptance of the Order.
- 2.10 The Company's employees or agents are not authorised to make any representations concerning the Goods unless set out in the Contract. The Contract constitutes the entire agreement between the Company and the Buyer. In entering into the Contract, the Buyer acknowledges that it does not rely on and irrevocably waives any claim it may have for damages for or right to rescind the Contract for any representations which are not set out in the Contract.
- 2.11 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the application, use or storage of the Goods not set out in the Contract is followed or acted upon entirely at the Buyer's own risk.
- 2.12 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures, on its website or Webshop are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.13 Any typographical, clerical or other error or omission in any specification, quotation, acceptance of offer, delivery note or invoice issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.14 A quotation for the Goods given by the Company shall not constitute an offer. A quotation will only be valid for a period of 20 Business Days.
- 2.15 No Order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

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2.16 Our UK Webshop is intended for sales to UK business customers only. Our EU Webshop is intended for sales to EU business customers only. We do not sell Goods to consumers.

3 THE GOODS

3.1 The Goods are described in the Company's catalogues, brochures, website and Webshop or as modified in any Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify and keep indemnified the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Company reserves the right to make any changes to the Specification and/or the Goods which are required to conform to any applicable statutory or regulatory requirements.

4 PRICE OF THE GOODS

4.1 The price of the Goods shall be the price set out in the Company's written acceptance of the Order, or, if no price is quoted, shall be the price set out in the Company's published price list in force at the date of delivery of the Goods.

4.2 The Company reserves the right to alter prices by giving notice to the Buyer at any time before delivery to reflect any increase in the cost of the Goods which is due to:-

4.2.1 any factor beyond the Company's control (including but not limited to foreign exchange fluctuations, increases in taxes and duties and increases in the cost of raw materials or labour and other manufacturing costs);

4.2.2 the Buyer's change of delivery date, design, quantities or specification of Goods; or

4.2.3 delay caused by any failure of the Buyer to give the Company adequate or accurate information or instructions.

4.3 When Goods comprised in any Contract are despatched in more than one consignment, the price of the Goods comprised in each consignment will be the price ruling at the date of delivery of that consignment. In the event of variation to any Contract or suspension of work on any Contract on the Buyer's instructions, any price quoted by the Company may be adjusted accordingly.

4.4 Unless otherwise agreed in writing, the price quoted for the Goods is exclusive of the costs of packaging, insurance and carriage of the Goods. The cost of packaging, insurance and carriage shall be charged to the Buyer as an addition to the quoted price on all Goods where the Company has agreed to arrange carriage. Unless otherwise agreed, the cost of carriage

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by the most cost effective manner, dependent upon weight and volume of the Goods shall be selected by the Company (if weight is under 25 kilos carriage of the Goods will be made by air to mainland Europe) according to the rates ruling at the date of delivery and shall be paid by the Buyer when it pays for the Goods.

4.5 All prices are quoted, whether in the Company's published price list or in any contract, exclusive of any applicable value added tax, import or export duties and other taxes or duties. The Buyer shall on receipt of a valid VAT invoice from the Company in respect of these additional costs, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

4.6 We sell a large number of Goods through our Webshop. It is always possible that, despite our reasonable efforts, some of the Goods on our site may be incorrectly priced. We will normally check prices as part of our dispatch procedures so that:

4.6.1 where the Goods' correct price is less than the price stated on our Webshop, we will charge the lower amount when dispatching the Goods to you; and

4.6.2 if the Goods' correct price is higher than the price stated on our Webshop, we will contact you In Writing as soon as possible to inform you of this error and we will give you the option of continuing to purchase the Goods at the correct price or cancelling your Order. We will not process your Order until we have your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the Order as cancelled and notify you in writing. However, if we mistakenly accept and process your Order where a pricing error is obvious and unmistakeable and could reasonably have been recognised by you as a mispricing, we may cancel supply of the Goods and refund you any sums you have paid.

5 TERMS OF PAYMENT

5.1 Payment for the Goods (and if appropriate, carriage and delivery costs) shall be made in full by the Buyer on the placing of an Order unless the Buyer has a credit account with the Company, when the Company may invoice the Buyer for the price of the Goods (plus the cost of any agreed carriage) at any time after the Company has notified the Buyer that the Goods are ready for collection by the Buyer.

5.2 The Buyer can pay for Goods on the Company's Webshop using a debit card, or credit card.

5.3 On the establishment of a credit account, the Buyer shall pay the Company's invoices in full and in cleared funds by the end of the month following the month the invoice was dated. The Company may recover the amount invoiced notwithstanding that delivery may not have taken place and title in the Goods has not passed to the Buyer. The time of payment shall be of the essence of the Contract. Any variation to these terms must be agreed in writing by a Director of the Company.

5.4 If the Buyer fails to make any payment when due or breaches any provisions of the Contract or any other contract with the Company, the Company may:-



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- 5.4.1 cancel the Contract and any other contract with the Buyer or suspend any further deliveries under the Contract and any other contract with the Buyer without any liability to the Buyer;
 - 5.4.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company as the Company may think fit (notwithstanding any purported appropriation by the Buyer)); and
 - 5.4.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at a rate not exceeding 8 per cent per annum over the Bank of England base rate until payment in full is received. The Company may further charge the Buyer for collection costs in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.5 The Buyer will pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Company to the Buyer.

6 DELIVERY

- 6.1 The Company will ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Buyer and Company reference numbers, the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 6.2 If the Company agrees to organise carriage for the delivery of the Goods, the Company shall arrange such carriage to the location set out in the Order or such other location as the parties may agree ("Delivery Location"). Where no Delivery Location is specified it will be the Company's premises as set out in the written confirmation of the Order issued by the Company. The Buyer agrees that the Company shall have no obligation to give notice under section 32(3) of the Sale of Goods Act 1979. Delivery of the Goods shall be completed at the time of collection of the Goods by the carrier from the Company.
- 6.3 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in any instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated or cancel any other instalment.
- 6.4 Any dates quoted for delivery of the Goods are approximate only. Time for delivery shall not be of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.5 If the Company fails to deliver the Goods, the Company's liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the



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Buyer's failure to provide the Company with adequate delivery instructions that are relevant to the supply of the Goods. If the Buyer fails to take delivery of the Goods within 3 Business Days of the Company notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:

- 6.5.1 delivery of the Goods will be deemed to have been completed at 9.00am on the third Business Day after the day on which the Company notified the Buyer that the Goods were ready; and
- 6.5.2 the Company will store the Goods until delivery takes place and charge the Buyer for all related costs and expenses (including insurance).
- 6.5.3 If 10 Business Days after the day on which the Company notified the Buyer that the Goods were ready for delivery the Buyer has not taken delivery of them, the Company may sell the Goods at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Buyer for the excess over sums owing by the Buyer or charge the Buyer for any shortfall.

7 International delivery

- 7.1 For Orders placed on our EU Webshop we deliver to the countries listed on this page: Netherlands, Belgium, Germany, Luxembourg, France, Denmark, Italy, Monaco, Czechia, Cyprus, Poland, Austria, Bulgaria, Croatia, Estonia, Finland, Greece, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Albania, Bosnia & Herzegovina, Faroe Islands, Greenland, Iceland, Republic of Moldova, Montenegro, North Macedonia, Serbia, Ukraine (**International Delivery Destinations**). However, restrictions may apply for certain international delivery destinations.
- 7.2 If you order Goods from our Webshop for delivery to one of the International Delivery Destinations, your order may be subject to import duties and taxes which are applied when the delivery reaches that destination. Please note that we have no control over these charges and we cannot predict their amount.
- 7.3 You will be responsible for payment of any such import duties and taxes. Please contact your local customs office for further information before placing your order.
- 7.4 You must comply with all applicable laws and regulations of the country for which the Goods are destined. We will not be liable for such compliance of applicable laws and regulations.

8 SHORTAGES, DAMAGE AND LOSS IN TRANSIT

- 8.1 No claim for non-delivery of the whole or part of any consignment nor for damage in transit, shortage of delivery, deviation, delay, or detention will be entered unless separate notices in writing are given to the Carrier designated to the Buyer as responsible for delivery of the Goods and to the Company within 5 working days of the receipt of the Goods, or in the case of the non-delivery of a complete consignment within 14 days of notification by the Company that the Goods are ready for despatch and in either case a complete claim is made

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in writing within a further 10 working days. The Goods in respect of which such claim for damaged goods is made shall be preserved intact for inspection. The Company and the designated Carrier of the Goods shall have the right to attend at the Buyer's place of business or otherwise the Delivery Location to investigate the claim.

- 8.2 The Buyer shall inspect the Goods on delivery and unless the Buyer notifies any defects within 7 days of delivery, shall be deemed to have accepted them as in accordance with the Contract. After acceptance, the Buyer shall not be entitled to reject Goods which are not in accordance with the Contract. In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject the Goods.
- 8.3 The Goods are sold as a batch. Without affecting any rights which the Buyer may have to reject all the batch, the Buyer may not accept some and reject some only of the Goods.

9 TITLE AND RISK

- 9.1 Risk in the Goods shall pass to the Buyer upon collection by the designated carrier.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title to the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full for the price of the Goods and all other goods (including carriage costs) agreed to be sold by the Company to the Buyer for which payment is then due.
- 9.3 Until title to the Goods has passed to the Buyer, the Buyer shall:-
- 9.3.1 store the Goods separately from those of the Buyer and all third parties and properly stored, protected and insured so that they remain identifiable as the Company's property;
 - 9.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 9.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 9.3.4 notify the Company if it becomes subject to any of the events listed in clause 12.1; and
 - 9.3.5 give the Company such information relating to the Goods as the Company may require from time to time.
- 9.4 Subject to clause 9.5 the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Buyer resells the Goods before that time:
- 9.4.1 it does so as principal and not as the Company's agent; and



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- 9.4.2 title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.
- 9.5 If, before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 12.1 or the Company reasonably believes any such event is about to happen and notifies the Buyer accordingly, then, provided the Goods remain in existence and have not been resold or irrevocably incorporated into another product, the Company may at any time without limiting any of its other rights and remedies, require the Buyer to deliver up the Goods and, if the Buyer fails to do so forthwith enter upon any premises of the Buyer or any third party where the Goods are stored and recover the Goods.
- 9.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness the Goods which remain the Company's property but if the Buyer does so all monies owing by the Buyer to the Company shall without limiting any other right or remedy the Company has, forthwith become due and payable.
- 9.7 If Goods are destroyed by an insured risk prior to the same being paid for by the Buyer, the Buyer shall receive the proceeds of the insurance as trustee for the Company.
- 9.8 The Company shall be entitled to a contractual and special lien on any Goods including raw materials and tooling ("Buyer's Materials") which the Buyer may have supplied to the Company for the purposes of the Contract which are in the Company's possession until the Company shall have received in cash or cleared funds payment in full for the price of the Goods and all other goods agreed to be sold by the Company (including insurance and carriage costs) for which payment is then due and the Company may use or dispose of the same to set against sums owing by the Buyer and at such price as the Company sees fit.

10 WARRANTIES

- 10.1 The Company warrants that it holds unencumbered title to the Goods.
- 10.2 Subject to the conditions set out below, the Company warrants that the Goods will on delivery and for a period of 12 months from the date of delivery ("the Warranty Period"):-
- 10.2.1 correspond in all material respects with their description or Specification as set out in the Company's written acceptance of the Order; and
- 10.2.2 be free from material defects in design, material and workmanship.
- 10.3 The Company shall not be liable for the Goods failure to comply with the warranty set out in clause 10.2:-
- 10.3.1 if the Buyer makes any further use of the Goods after giving notice in accordance with clause 10.4;
- 10.3.2 in respect of any defect arising from fair wear and tear, wilful damage, negligence (including improper storage, improper installation or maintenance, abnormal working

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conditions, failure to follow the Company's oral or written instructions) misuse or alteration or repair of the Goods without the Company's approval;

- 10.3.1 if the defect arises as a result of the Company following any drawing, design or Specification supplied by the Buyer;
 - 10.3.2 if the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;
 - 10.3.3 if such failure relates to non-metallic seals or gaskets comprised in the Goods;
 - 10.3.4 if any sum owing by the Buyer to the Company has not been paid; or
 - 10.3.5 for parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 10.4 Subject to clause 10.3 and if:-
- 10.4.1 the Buyer gives notice in writing to the Company (and in any event before expiry of the Warranty Period) within a reasonable time of discovery that some or all of the Goods do not comply with the warranty in clause 10.2;
 - 10.4.2 the Company is given a reasonable opportunity of examining such Goods; and
 - 10.4.3 the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost,
- then, the Company shall at its option, replace those Goods which do not meet the warranty in condition 10.2 or, at the Company's sole discretion, refund to the Buyer the price of those Goods but the Company shall have no further liability to the Buyer in this regard.
- 10.5 Except as expressly provided in these Conditions, all warranties, conditions, representations and other terms implied by statute or common law and all the laws of the country where the Buyer is located are excluded from the Contract to the fullest extent permitted by law.
- 10.6 Save as specified by the Company in the written acceptance of Order, or as stated in any test certificate supplied by the Company in respect of the Goods, the Company does not guarantee that the Goods will comply with any industry codes of practice or specific industry standards.
- 10.7 These Conditions shall apply to any repairs or replacement Goods supplied by the Company and to any Orders for refurbishment of Goods supplied previously by the Company, save that refurbishments, replacements or repairs shall be warranted for an additional period of three months or until the expiry of the original Warranty Period for the Goods, whichever is the longer.

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11 LIMITATION OF LIABILITY

11.1 Nothing in these Conditions shall limit or exclude the Company's liability for:

11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

11.1.2 fraud or fraudulent misrepresentation;

11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

11.1.4 any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

11.2 Subject to clause 11.1:

11.2.1 the Company shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

(a) any indirect, special, consequential or pure economic loss or damage;

(b) any loss of profits, anticipated profits or savings, revenue or business opportunities; or

(c) damage to goodwill

(in each case arising as a direct or indirect result of the relevant claim); and

11.2.2 the Company's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 125% of the price of the Goods.

11.3 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations, if the delay or failure was due a Force Majeure Event.

12 TERMINATION

12.1 Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Buyer if the Buyer:

12.1.1 fails to make any payment when due;

12.1.2 commits a material breach of any material term of Contract (and if remediable the breach has not remedied within 10 Working Days of receiving notice requiring it to be remedied);

12.1.3 persistently breaches any one or more terms of the Contract;

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- 12.1.4 is, or is deemed to be, unable to pay its debts as they fall due or is insolvent, suspends making payments on any debts or announces an intention to do so, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness by reason of actual or anticipated financial difficulties, has a moratorium declared in respect of any of its indebtedness, ceases or threatens to cease to carry on business, applies for an interim order under Section 252 Insolvency Act 1986 or has a bankruptcy petition presented against it, has appointed in respect of it or any of its assets a liquidator, trustee in bankruptcy, judicial custodian, supervisor, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case whether out of court or otherwise), pledges or charges any Goods which remain the property of the Company, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances; or
- 12.1.5 appears to the Company due to its credit rating to be financially inadequate to meet its obligations under this Agreement.
- 12.2 For the purposes of Clause 12.1.2, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of the Contract.
- 12.3 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company if the Buyer becomes subject to any of the events listed in clause 12.1.1 to clause 12.1.5 or the Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 12.4 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 12.5 On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.
- 12.6 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 12.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

13 **FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance



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continues for three months', the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

14 BREXIT

14.1 If a Brexit Trigger Event occurs, the Company may:

14.1.1 subject to clause 4.2, require the Buyer to negotiate in good faith an amendment to the Contract to alleviate the Brexit Trigger Event; and

14.1.2 if no such amendment is made to the Contract within 30 days, terminate the Contract by giving the Buyer not less than 30 days' written notice. On termination under this clause, clause 12.5 shall apply.

14.2 Brexit Trigger Event means any of the following events occurring at any time after the UK ceases to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union negotiated under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union:

14.2.1 a substantial adverse impact on a party's ability to perform the Contract in accordance with its terms and the law;

14.2.2 delays the Company may incur due to new or additional customs procedures in connection with:

(a) the purchase and/or receipt of raw materials; or

(b) the sale and/or transportation of Goods outside of the United Kingdom.

14.2.3 an increase in the costs incurred by the Company in performing the Contract of at least 15% since the price for the Goods was last agreed; and

14.2.4 the price of the Goods under this agreement is at least 10% lower than the market value for similar products or services (an impact on the Company).

15 CONFIDENTIALITY

15.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 15.2. This includes but is not limited to the source of supply of all raw materials, component parts and other items sourced by the Company. For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

15.2 Each party may disclose the other party's confidential information:



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15.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and

15.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

16 INTELLECTUAL PROPERTY

All copyright and other intellectual property rights in and to all drawings, designs, sketches, prototypes and prototype designs suggested or submitted by the Company to the Buyer are vested in and shall remain the property of the Company unless specifically agreed otherwise in writing by a Director of the Company. All intellectual property rights in and to any products displayed in the Company's catalogue, website or other trade literature including all photography are owned by and/or registered in the name of the Company. Any infringement of the Company's rights will be vigorously contested.

17 GENERAL

17.1 The Company may at any time assign, transfer, charge or sub contract its rights and obligations under the Contract. The Buyer may not assign any of its rights and obligations without the prior written consent of a Director of the Company. No one other than a party to this Contract and its permitted assignees shall have the right to enforce its terms.

17.2 Any notice given to a party under or in connection with the Contract shall be in writing addressed to the addressee at its registered office or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. A notice will be deemed to have been received: if delivered personally, when left at the registered office or such other address that has been notified; if sent by pre-paid first class post or other next working day delivery service, at 9am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed or if sent by fax or email, one Business Day after transmission. The provisions of this clause 17.2 do not apply to the service of any proceedings or other documents in any legal action.

17.3 No delay or failure by the Company in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Company shall be effective unless in writing.

17.4 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 be deemed severable of such provision or provisions and the remaining



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provisions of the Contract and the remainder of any such provision shall continue in full force and effect.

- 17.5 Save in respect of Goods produced under a Specification, the Company shall provide to the Buyer without charge, one set of such documentation as the Company considers appropriate for the Buyer to facilitate correct installation, utilisation and maintenance of the Goods supplied. These include (but are not limited to) Test Certificates, Materials Certificates and Operating Instructions. Subsequent requests by the Buyer for additional copies of these documents will incur a charge to the Buyer not exceeding £25.00 (twenty five pounds Sterling) (or equivalent in the currency invoiced). Such charges shall be levied by way of invoice to the Buyer and be payable in advance.

18 GOVERNING LAW AND JURISDICTION

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of England and Wales.