

**GILL GROUP COMPANY TERMS & CONDITIONS**  
**THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF**  
**CONDITION 16**

**1. INTERPRETATION**

In these terms and conditions ("**Terms**") the terms and expressions set out in Schedule 1 shall have the meaning set out therein and the rules of interpretation in Schedule 1 shall apply.

**2. APPLICATION OF TERMS**

2.1. Each order for Products and request for Services from the Customer to the Company shall be deemed to be an offer by the Customer to purchase the Products and/or Services subject to these Terms. Subject to any variation under condition 2.2 the Contract will be on these Terms to the exclusion of all other terms and conditions, including any terms or conditions which the Customer seeks to impose or incorporate under any purchase order, confirmation of order, specification or other document or which are implied by trade, custom, practice or course of dealing.

2.2. These Terms apply to all the Company's sales and any variation to these Terms and any representations, warranties or other statements about the Products and Services shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.

2.3. Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Products or illustrations or descriptions of the Services contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products and/or Services described in them. They shall not form part of the Contract or have any contractual force unless they are agreed to be included in or attached to the Quotation.

2.4. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

2.5. No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company when a contract for the provision of Products and Services under these Terms will come into effect.

2.6. The Company will send the Customer a Quotation on the basis of the Customer Information.

2.7. Any Quotation given is valid only for the period stated in the Quotation or if no period is stated a period of 30 days from its date, provided that the Company has not previously withdrawn it.

**3. CUSTOMER INFORMATION**

3.1. The Customer will supply to the Company the Customer Information and any other information required under the Contract.

3.2. The Customer acknowledges that the Customer and/or the Customer's Representative is solely responsible for providing the Customer Information.

3.3. The Customer warrants that the Customer Information and any further information supplied by the Customer and/or the Customer's Representative to the Company under the Contract is complete and accurate in all respects.

3.4. The Customer acknowledges that the Company shall rely on the Customer Information in determining and selecting the appropriate Products and Services and preparing the Quotation.

3.5. The Company shall be entitled to rely upon the specification and any advice given by the Customer (in relation to the suitability of the Products and/or Services for meeting the Customer's requirements) such that to the extent that the Products and Services comply with such specification and or such advice then the Company shall be deemed to have supplied in accordance with these Terms, without limitation, notwithstanding the Customer Information.

3.6. If the Customer wishes to proceed with the provision of the Products and the Services by the Company in accordance with the Quotation the Customer must return its purchase order to the Company prior to the commencement of work by the Company, as confirmation that the Quotation accurately sets out the Customer's requirements.

3.7. Without prejudice to condition 3.1, the Customer shall provide to the Company without charge or delay on request from the Company all reasonable assistance as may be so requested by the Company and all additional information and data reasonably requested by the Company to enable the Company to provide the Products and carry out the Services.

3.8. Any Customer Information supplied by the Customer shall include details of whether any technical data supplied by the Customer requires an export licence or other governmental approval and all other relevant details which relate to the Customer's requirements.

3.9. Any information not supplied to the Company by the Customer and/or the Customer's Representative is deemed to be unknown to the Company

3.10. No changes to the Customer Information, the Quotation, the Products and the Services will form part of the Contract unless agreed in writing by the parties. The Customer understands that as a condition to agreeing a change the Company may alter these Terms for the provision of the Product and the Services (including increasing the Price).

3.11. If the Customer wishes to amend the Customer Information or if the Customer Information is subsequently found to be inaccurate and/or not complete for any reason other than the Company's negligence the Company will be entitled to alter these Terms for the provision of the Products and the Services (including increasing the Price).

3.12. No order which has been accepted by the Company may be cancelled by the Customer, except with the agreement in writing of the Company and provided that the Customer indemnifies the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

**4. SUPPLY OF PRODUCTS**

4.1. The Products are described in the Quotation.

4.2. To the extent that the Products are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company by a third party arising out of or in connection with the Company's use of the specification supplied by the Customer. This condition 4.2 shall survive termination of the Contract.

4.3. The Company has the right (but not the obligation) to amend the specification of the Products if required by any applicable statutory or regulatory requirements.

4.4. Where the Company purchases goods and/or services for the Customer from a third party it does so as agent for the Customer and it shall be the Customer's responsibility to ensure that such goods and/or services are suitable for its requirements and the Company shall have no responsibility or liability for such goods and/or services (whether for their suitability, performance or otherwise).

4.5. In respect of the disposal of waste Products, if and to the extent that the Waste Electrical and Electronic Equipment Regulations 2013 (**WEEE**) apply to the Products, both parties shall comply with their respective obligations under WEEE and shall co-operate with each other to the extent reasonably necessary to facilitate their compliance with WEEE.

**5. PAYMENT**

5.1. The price for the Products and Services and any Operating Manuals shall be the price set out in the Quotation or as otherwise notified by the Company to the Customer ("**Price**").

5.2. Unless otherwise specified the Price shall be exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other sales tax, tariffs, charges and duties or other local, national government or European Union levies of which amounts the Customer will pay in addition when it is due to pay for the Products and Services.

5.3. If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to the Company, the Customer shall increase the sum it pays to the

Company by the amount necessary to leave the Company with an amount equal to the sum it would have received if no such withholdings or deductions had been made.

5.4. The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Products as have not been delivered to reflect any increase in the cost to the Company which is due to any factor beyond the Company's control (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, increase in the Company's supplier's costs, increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Product which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

5.5. Payment in full of all amounts as are invoiced to the Customer by the Company shall be made by the Customer in pounds sterling within 30 days of the date of the Company's invoice. Any amounts which are disputed in good faith by the Customer must be notified to the Company within 15 days of the date of the Company's invoice which is the subject of the dispute.

5.6. The time for payment shall be of the essence and no payment shall be deemed to have been made until the Company has received payment in cleared funds.

5.7. If the Customer fails to pay the Company any sum due pursuant to the Contract by the due date, then without limiting the Company's remedies, the Customer shall pay interest to the Company on such sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this condition will accrue each day at 4% a year above the Bank of England's base lending rate from time to time, but at 4% a year for any period when that base rate is below 0%. Any interest payable under this condition shall be paid immediately on demand by the Company.

5.8. The Company may suspend or cancel the provision of the Products and/or Services or may at its discretion request security for payment from the Customer in the event of late payment under the Contract or any other contract between the Company and the Customer. If the Customer fails to comply with any request made by the Company for security for payment within 15 days of the date of the Company's request the Company may terminate the Contract without liability to the Customer immediately by giving written notice to the Customer.

5.9. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

**6. DELIVERY OF THE PRODUCTS**

6.1. Unless otherwise agreed in writing by the Company, delivery of the Products shall take place at the Company's premises or such other location as is specified in the Quotation.

6.2. The Company will use reasonable endeavours to give the Customer prior notice of any delivery date.

6.3. The Customer must take delivery at the time so notified (or if delivery takes place at some other time then as soon as practicable) and afford the Company access to the delivery location to check the Products and ancillary materials delivered to the delivery location.

6.4. All Products supplied to the Customer which conform in all material respects with the Quotation shall be deemed accepted by the Customer.

6.5. Any dates specified by the Company for delivery of the Products are intended to be an estimate and time shall not be of the essence for delivery and any other obligations under the Contract and shall not be made of the essence by notice. If no dates are so specified, delivery of the Products will be within a reasonable time.

6.6. The Customer understands that delivery of Products is conditional upon availability and the Company shall not be liable if prevented from meeting the Contract because the Products (or any part of the Products) are not readily available by reason of any circumstances outside the control of the Company.

6.7. If for any reason the Customer will not accept delivery of any of the Products when they are ready for delivery, or the Company is unable to deliver the Products on time because the Customer has not provided or obtained appropriate instructions, documents, licences, consents or authorisations ("**Customer Caused Event**"), the Products will be deemed to have been delivered, risk in the Products will pass to the Customer and the Customer shall pay to the Company any additional costs and expenses incurred by the Company as a result of the Customer Caused Event (including storage and insurance).

6.8. The Customer will provide at its expense at the place where delivery of the Products is to take place adequate and appropriate equipment and manual labour for loading or unloading the Products.

6.9. The Company reserves the right to make partial deliveries. The Customer shall not be entitled to object to or reject the delivery by reason of the surplus or shortfall.

6.10. The Customer must give notice in writing of any damage to the Products to the Company within 7 days of delivery of the Products giving full particulars, including the condition of parcels received, failing which the Company is discharged from any liability in respect of such damage and the Products are deemed to be compliant.

6.11. Any liability of the Company for non-delivery of the Products shall in all circumstances be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Price against any invoice raised for such Products.

6.12. Any tests that the Customer wishes the Company to carry out on the Products in the presence of the Customer (other than those that the Company has agreed to carry out as part of the performance of the Services) will only be carried out if agreed in writing by the Company and if the Customer pays the Company's charges for such tests at the Company's standard charges in force from time to time and any additional charges imposed by the Company for light, heat, water and the hiring of special equipment that may be needed for the purposes of such tests.

**7. PRE-DELIVERY TESTING**

7.1. Where the Company has agreed in the Quotation to test the Products and/or Prototypes before delivery the following terms apply:

(a) Before delivering the Products and/or Prototypes to the Customer, the Company shall carry out the acceptance tests for the relevant Products and/or Prototypes specified in the Quotation, or if no acceptance tests are specified in the Quotation, the Company shall carry out reasonable tests to ensure that such items conform to their specification in all material respects;

(b) If the Products and/or Prototypes fail, in some material respect, to pass the Tests (an "**Error**"), the Company shall use reasonable efforts to correct any such Error within a reasonable time. If the Company is unable to correct the Error within a period of six months from the start of the Tests (or such longer period as the parties may agree), the Company shall notify the Customer and (i) either party may without liability to the other party terminate the Contract immediately by giving notice in writing to the other; or (ii) The Customer may permit delivery of the relevant Prototypes and/or Products subject to such change of acceptance tests, amendment of the Quotation and/or reduction in the Price as, after taking into account all the relevant circumstances, is reasonable.

7.2. Customer understands and agrees that except where the Company has expressly agreed in the Quotation to test the Products and/or Prototypes before delivery, the Company has no obligation to carry out any tests on the Products and/or Prototypes before delivery to the Customer.

**8. POST-DELIVERY ACCEPTANCE TESTS**

8.1. The provisions of this condition 8 shall only apply where the Company has expressly agreed in the Quotation to carry out acceptance tests on the Products and/or Prototypes after delivery.

8.2. No later than 30 days from the date of signature of this agreement, the Customer shall deliver to the Company proposed user acceptance criteria and test data for the Acceptance

Tests for the Products and/or Prototypes. These criteria and data shall be such as are reasonably required to show that the Products and/or Prototypes complies with their applicable specification. The Company shall provide the Customer with reasonable assistance to prepare such user acceptance criteria and test data at the Customer's request. The parties shall use best endeavours to agree the Acceptance Tests for the Products and/or Prototypes within ten days from the date of delivery to the Company of the proposed criteria and data.

8.3. Within ten days of delivery of the Products and/or Prototypes, the Acceptance Tests shall be carried out. The Acceptance Tests shall be started as soon as reasonably possible after installation and shall be run continuously during normal working hours. The Customer shall carry out the agreed Acceptance Tests for the Products and/or Prototypes unless the Company notifies the Customer that it will carry out the Acceptance Tests. The party carrying out the Acceptance Tests shall give the other party at least 24 hours' notice of the start of the Acceptance Tests and permit the other party to observe all or any part of the testing.

8.4. If the Products and/or Prototypes fail to pass the Acceptance Tests, the Customer shall, within 5 days from the completion of the Acceptance Tests, or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Company shall use reasonable endeavours to remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.

8.5. If the Products and/or Prototypes fail in some material respect to pass any repeated Acceptance Tests within four weeks from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to the Company, choose at its sole discretion:

(a) to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the Products and/or Prototypes on the same terms and conditions. If the Products and/or Prototypes fail such further tests then the Customer may request a repeat test under this condition 8;

(b) to accept the Products and/or Prototypes subject to such change of acceptance criteria, amendment of the specification and/or reduction in the Price as, after taking into account all the relevant circumstances, is reasonable; or

(c) if the Company is unable to correct material defects within a period of three months from the commencement of Acceptance Tests under condition 8.2, to reject the Products and/or Prototypes as not being in conformity with the Contract, in which event the Customer may terminate the Contract.

8.6. The Products and/or Prototypes shall be deemed accepted by the Customer if (whichever is the earlier):

(a) the Customer notifies the Company that the Products and/or Prototypes have passed the Acceptance Tests or the Customer has otherwise accepted the Products and/or Prototypes;

(b) The Customer does not provide any written notice under condition 8.4 in the five day period after completion of all the Acceptance Tests;

(c) The Products and/or Prototypes are found to conform with the Quotation;

(d) ten days after delivery of the Products and/or Prototypes, the Acceptance Tests have not started, or have not been pursued with due diligence, unless such failure results from the Company's failure to co-operate in the performance of the Acceptance Tests; or

(e) the Customer uses the Products and/or Prototypes in the normal course of the Customer's business.

#### 9. EXPORT AND COMPLIANCE WITH POLICIES

9.1. Where the Products are supplied for export from the United Kingdom, the provisions of this condition 9 shall (subject to any contrary terms agreed in writing between the Customer and the Company) override any other provision of these Terms.

9.2. Unless specified in the Quotation or otherwise agreed in writing by the Company, the Customer shall be responsible for obtaining any necessary import licences or permits necessary for the entry of the Products into the country where the Customer is located, or their delivery to the Customer. The Customer shall be responsible for any customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Products.

9.3. Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including Software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including the United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

9.4. Each party undertakes:

(a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it that substantially replicates the one set out in condition 8.3; and

(b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

9.5. In circumstances where the Company has agreed to obtain any necessary import licences or permits necessary for the entry of the Products into the country where the Customer is located and the Company is unable to obtain such licences or the Company is unable deliver the Products in compliance with any Export Control Laws the Company may terminate the Contract in respect of such Products immediately by giving written notice to the Customer. Any liability of the Company for termination of the Contract under this condition 9.5 shall in all circumstances be limited to issuing a credit note at the pro rata Price against any invoice raised for such Products.

#### 10. SOFTWARE LICENCE

10.1. If the Company refers to a software licence in the Quotation, unless otherwise stated in the Quotation, the Price includes the licence fee for the Customer's right to use any Software provided as part of the Products and/or Services.

10.2. If the Customer is provided with any software licence in respect of the Software, the Customer shall sign and return it to the Company within seven days of installation of the Software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.

10.3. If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:

(a) the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement or for normal operation of the Products), reproduce, translate, adapt, vary or modify the Software, nor communicate it to any third party, without the Company's prior written consent;

(b) the Customer shall not use the Software on any equipment other than the Products and/or Prototypes, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software or the medium on which it resides;

(c) such licence shall be terminable by either party on 28 days' written notice, provided that the Company may terminate the licence only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or the Company is compelled to do so by law, or if the Customer has failed to comply with any term of this licence; and

(d) on or before the effective date of termination of this licence, the Customer shall return to the Company all copies of the Software in its possession.

#### 11. SUPPLY OF SERVICES

11.1. The Company shall provide the Services and deliver the Deliverables and Prototypes to the Customer in accordance with the Quotation in all material respects.

11.2. The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

11.3. The Company shall have the right (but not the obligation) to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall use reasonable endeavours to notify the Customer in any such event.

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

11.5. All Prototypes supplied to the Customer which conform in all material respects with the Quotation shall be deemed accepted by the Customer.

11.6. Notwithstanding anything to the contrary, the Company does not warrant that the provision of the Services, any Prototypes and/or any Software supplied as part of the Deliverables will be uninterrupted or error-free.

#### 12. CUSTOMER'S OBLIGATIONS

12.1. The Customer shall:

(a) unless otherwise agreed in writing, prepare its premises for delivery of the Products and/or performance of the Services in such manner as set out in the Quotation or as the Company shall reasonably require;

(b) co-operate with the Company in all matters relating to the Services;

(c) 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 provide the Services; and

(d) keep and maintain all materials, equipment, documents and other property of the Company (**Company Materials**) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.

12.2. The Customer and the Customer's Representative undertake to give notice in writing to the Company and any of the Company's agents or contractors of any laws and regulations which affect or may affect the Products and/or Services (the "**Local Regulations**") any special site conditions and/or any safe working procedures. If the Customer fails to inform the Company of any Local Regulations, site conditions and/or safe working procedures which may apply to the Customer's premises and/or advise the Company of any prospective changes in the Local Regulations the Company will be entitled to alter these Terms for the provision of the Products and/or Services (including increasing the Price).

12.3. The Customer undertakes to the Company throughout the term of the Contract to take all reasonable precautions to protect the health and safety of the Company's employees, agents and sub-contractors while on the Customer's premises.

12.4. The Customer shall obtain all necessary permits, licences and consents required for the Services before the date on which the Services are to start.

12.5. The Company reserves the right to refuse to carry out the Services where the Company at its sole discretion considers that the work required might place at risk any person, vehicle, equipment or property.

12.6. If for any reason (other than as a direct result of the Company's negligence), access to the Customer's premises is delayed, the Customer shall be liable for any loss or damage suffered by the Company as a result of such delay.

12.7. The Customer shall be solely responsible for obtaining any legal consents and permissions required for the carrying out of the Services and operation of the Products at the Customer's premises. The Company shall not be liable for any failure by the Customer to obtain such consents or permissions.

12.8. If the Company's performance of any of its obligations in respect of the Products and/or Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services and/or delivery of the Products until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;

(b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this condition 12.8; and

(c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

12.9. If suspension pursuant to condition 12.8 continues for a period of 7 days or more (or the parties cannot agree to any new terms including an increase in the Price) the Company shall be entitled (without prejudice to its other remedies under the Contract for such breach) to:

(a) terminate the Contract immediately by giving written notice to the Customer (and be entitled to payment for loss of profit and payment at the Company's standard charges for Products and/or Services already performed, supplied or ordered); and

(b) sell or, at its option, destroy the Products where title to the Products has not passed to the Customer to apply the proceeds of sale thereof if sold, and the scrap value if destroyed, towards payment of all sums due to the Company under the Contract.

12.10. Unless otherwise agreed in writing by the Company, all Services to be performed at the Customer's premises (or other location specified in the Quotation for delivery of the Services) shall be performed during the Company's usual working hours.

12.11. The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company by a third party arising out of or in connection with the provision of the Services or supply of the Products, Deliverables and Prototypes to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Customer, its employees, agents or subcontractors.

#### 13. RISK/TITLE

13.1. The Products and Prototypes are at the risk of the Customer from the time of delivery.

13.2. Ownership of the Products and Prototypes shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Products and Prototypes.

13.3. Until ownership of the Products and Prototypes has passed to the Customer, the Customer must:

(a) hold the Products and Prototypes on a fiduciary basis as the Company's bailee;

(b) store the Products and Prototypes (at no cost to the Company) separately from all other products of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products and Prototypes;

(d) maintain the Products and Prototypes in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and

(e) hold the proceeds of the insurance referred to in condition 13.3(d) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account but the Customer may resell or use the Products in the ordinary course of its business.

13.4. Until ownership has passed the Customer's right to possession of the Products and Prototypes shall terminate immediately if the Customer ceases trading or is unable to pay its debts as they fall due or a petition is presented or meeting convened for the purpose of winding the Customer up or the Customer enters into liquidation, whether voluntarily, or

compounds with its creditors generally or has a receiver appointed of all or any part of its assets or the Customer encumbers or in any way charges any of the Products or Prototypes or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly or if the Company terminates the Contract.

13.5. The Company shall be entitled to recover payment for the Products and Prototypes notwithstanding that ownership of any of the Products and Prototypes has not passed from the Company.

13.6. The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Products and Prototypes are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

#### 14. TERM AND TERMINATION

14.1. The Company may terminate the Contract immediately at any time by written notice if:

- (a) the Customer commits a breach of any term of the Contract;
- (b) the Customer fails to make any payment due to the Company under the Contract by the due date for payment;
- (c) the Customer ceases trading or is unable to pay its debts as they fall due or a petition is presented or meeting convened for the purpose of winding the Customer up or the Customer enters into liquidation, whether compulsorily or voluntarily, or compounds with its creditors generally or has a receiver appointed of all or any part of its assets; or
- (d) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 14.1(c).

14.2. On termination, however it arises, the Customer shall pay to the Company all costs and expenses, including legal and other fees incurred and all arrears of charges or other payments arising in respect of the Contract or otherwise.

14.3. If at any time the Products and/or Services or any part of the same become contrary to any statutory or regulatory requirement or any mandatory or non-mandatory embargo or the Company reasonably believes the Products and/or Services are likely to become so, the Company may, without liability to the Customer, immediately suspend performance of the Contract and/or terminate the Contract by giving written notice to the Customer.

14.4. Promptly following termination or if earlier, promptly following a written request from the Company, the Customer shall, at the Customer's cost and expense, on such dates and times as may be agreed by the Company remove or procure the removal of any and all equipment or other materials belonging to the Customer (**Customer Equipment**) that is situated at the Company's premises. If the Customer fails to remove the Customer Equipment within 14 days following the date of termination or written request from the Company, the Company may (at its discretion) either arrange for the delivery of the Customer Equipment to the Customer's registered office or may dispose of the Customer Equipment. The Customer shall be liable for all costs associated with the storage, delivery or disposal of the Customer Equipment. The costs of removal, storage and disposal may be deducted from any sale proceeds.

14.5. Termination, however or whenever it occurs, shall be subject to any rights and remedies the Company may have under the Contract or in law.

14.6. The following conditions shall survive termination of the Contract conditions 5, 10, 13, 16-22 inclusive and any other relevant condition.

#### 15. WARRANTY

15.1. The Company shall use all reasonable care and skill to provide the Products and perform the Services in a professional and efficient manner.

15.2. The Company warrants that during the Warranty Period, the Products shall conform to their description and any applicable specification in all material respects.

15.3. Subject to condition 15.4 and 15.5, if:

- (a) the Customer gives notice in writing to the Company during the Warranty Period within 21 days of discovery that some or all of the Products do not comply with the warranty set out in condition 15.2;
- (b) the Customer provides such information about such Products and the circumstances regarding the use of the Products as the Company may reasonably require;
- (c) the Company is given a reasonable opportunity of examining such Products;
- (d) the Customer (if asked to do so by the Company) returns such Products to the Company's place of business or to another place specified by the Company in the United Kingdom at the Company's cost; and
- (e) the Products are shown, to the Company's reasonable satisfaction, not to comply with the warranty set out in conditions 15.2

the Company shall, at its option, repair or replace the defective Products (excluding consumable items), or refund the price of the defective Products in full. If the Customer's claim is subsequently found by the Company to be outside the scope or duration of the warranty in condition 15.2, the costs of transportation of the Products, investigation and repair shall be borne by the Customer.

15.4. The Company shall not be liable for a breach of the warranty contained in Condition 15.2 or under any obligation to comply with conditions 15.3 if:

- (a) the Customer makes any use of the Products in respect of which it has given written notice under Condition 15.3(a);
- (b) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, temperature, calibration, use or maintenance of the Products or (if there are none) good trade practice
- (c) the defect arises as a result of the Company following any drawing, design or Products specification supplied by the Customer;
- (d) the defect is caused by improper use of the Products or use outside their normal application;
- (e) the defect arises due to fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the Customer (or any of its employees, agents or sub-contractors) alters or repairs the Products without the written consent of Company;
- (g) the Customer cannot show, to the Company's reasonable satisfaction, that the Products do not comply with the warranty set out in condition 15.2; or
- (h) the Customer fails to provide such information and access as may be reasonably requested by the Company to enable the Company to examine the Products and the conditions in which the Products are alleged to have failed to comply with the warranty set out in condition 15.2.

15.5. Notwithstanding anything to the contrary, the warranty in condition 15.2 does not cover the replacement of consumables (including batteries, cables, fuses) or Products, or parts of the Products which are specified as having a limited life.

15.6. Any Products repaired or replaced by the Company pursuant to this Condition 15 shall be under warranty for the unexpired portion of the warranty period given by the Company under Condition 15.2.

15.7. If any defect resulting from faulty works cannot be expeditiously carried out on the Customer's premises, the Company may remove the Products (or any part of the Products) from the Customer's premises for the purpose of repair.

15.8. Except as set out in this condition 15 or as otherwise agreed by the Company in writing, the Company shall not be liable for any labour expense or transportation cost incurred by the Customer in repairing or replacing Products covered by the warranty in condition 15.2.

15.9. The Customer understands and accepts that a defect in one Product shall not automatically entitle the Customer to reject other Products delivered to the Customer by the Company unless the Customer can show that the other Products do not comply with the warranty set out in condition 15.2.

15.10. The Customer shall indemnify and hold the Company harmless against all charges, costs, expenses and liabilities incurred by the Company or their agents as a result of any work

carried out pursuant to Condition 15.2 if in the Company's sole opinion, the defect arose as set out in condition 15.4.

15.11. Except as provided in this condition 15, the Company shall have no liability to the Customer in respect of the Products failure to comply with the warranty set out in condition 15.2.

#### 16. LIMITATION OF LIABILITY

16.1. In this Condition 16 the following shall mean an "Event of Default":

- (a) any breach by the Company of its contractual obligations arising under the Contract (other than a breach arising from wilful default or recklessness);
- (b) any misrepresentation by the Company in connection with (whether or not contained in the Contract) the Contract (other than a fraudulent misrepresentation);
- (c) any tortious, act or omission, including negligence, arising in connection with the Company's performance under the Contract (other than any act or omission which is fraudulent or dishonest); and/or
- (d) any other act giving rise to a liability in respect of the Contract.

16.2. The Company shall not be liable for any Event of Default caused by:

- (a) any act or omission of the Customer which is relative to its obligations under the Contract;
- (b) any failures of any third parties to provide equipment, software, materials or information required to produce the Products and/or perform the Services; and/or
- (c) down time of the computer systems caused by suppliers of third party computer services provided that (and to the extent that) the same is not due to any act, negligent omission or default of the Company, its employees, agents or sub-contractors.

16.3. Subject to condition 16.8:

- (a) the Customer acknowledges that the Company shall have no liability in respect of the suitability of the Products and/or Services which have been recommended and/or selected by the Company in accordance with the Customer's requirements and the Customer Information;
- (b) the Company shall not be liable to the Customer in respect of any Event of Default for: (i) loss of profits; (ii) loss of business; (iii) depletion of goodwill or similar losses; (iv) loss of anticipated savings; (v) loss of goods; (vi) loss of contract; (vii) loss of use; (viii) loss or corruption of data or information; or (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses even if such loss was reasonably foreseeable or the Company had been advised of incurring the same;
- (c) the Company's liability to the Customer in respect of each Event of Default shall be limited to the fee payable by the Customer for the Products or Service that is the subject of the Event of Default;
- (d) the Company's entire aggregate liability to the Customer in respect of any and all Events of Default shall be limited to 1.5 times the Price payable by the Customer in accordance with the Contract during the preceding twelve months;
- (e) If any advice provided to the Customer by the Company was provided free of charge by the Company then such advice is provided as is without any warranty of any kind from the Company and shall have no liability in relation thereto;
- (f) the Company shall have no liability to the Customer in respect of any Event of Default unless notice in writing of such claim (specifying in reasonable detail with supporting evidence the event, matter or default which gives rise to the claim and an estimate of the amount claimed) has been given to the Company within 12 months of the Customer becoming aware of the circumstances and in any event within 12 months following delivery of the Products and/or Services giving rise to such claim provided that without prejudice to their rights, the Customer and the Company agree that if they have reason to believe that they may have a cause of action hereunder, they shall liaise with the other in an open and co-operative way with a view to rectifying the reason for such cause of action whenever practicable.

16.4. If a number of Events of Default give rise substantially to the same loss or a number of Events of Default flow from the same defect then such Events of Default shall be regarded as giving rise to only one claim under these Terms.

16.5. The Customer hereby agrees to afford the Company not less than 60 days (following notification thereof by the Customer) in which to remedy any Event of Default hereunder.

16.6. Nothing in this condition 16 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

16.7. The Company shall not be liable for defects in Products caused by fair wear and tear, abnormal conditions of storage, of use or any act, neglect or default of the Customer or any third party.

16.8. Notwithstanding any other provision under these Terms or otherwise each party's liability to the other for:

- (a) death or personal injury resulting from its own or its employees', agents' or sub-contractors' negligence; and/or
- (b) any breach of the terms implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
- (c) defective products under the Consumer Protection Act 1987; and/or
- (d) in relation to any fraudulent misrepresentation or fraudulent acts of its employees shall not be limited or excluded.

16.9. Subject to condition 16.8, all warranties conditions and terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract (including any implied term that the Products will be fit for any particular purpose).

16.10. Subject to condition 16.8 and except as expressly and specifically provided in the Contract:

- (a) Prototypes are provided to the Customer on an "as is" basis without any warranty whatsoever; and
- (b) The Customer assumes sole responsibility for any use made of the Prototypes.

#### 17. INTELLECTUAL PROPERTY RIGHTS

17.1. All Background Intellectual Property shall remain the exclusive property of the party owning them (or, where applicable, the third party from whom its right to use the Background Intellectual Property has derived).

17.2. The Customer shall notify the Company in writing of, and identify to the Company, any Customer Background Intellectual Property that the Customer wishes the Company to use in connection with the Services and the Prototypes.

17.3. The Customer acknowledges that subject to condition 17.1, any and all Intellectual Property Rights in or arising out of or in connection with the Services and the Products shall be owned by the Company

17.4. The Customer hereby assigns to the Company, with full title guarantee, all rights in and to any Foreground Intellectual Property for the full duration of such rights, wherever in the world enforceable and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under the Contract, the Customer holds legal title in these rights and inventions on trust for the Company.

17.5. The Customer warrants to the Company that the use of the Customer's Background Intellectual Property in accordance with the Contract by the Company will not infringe the rights of any third party.

17.6. At the Customer's expense the Customer shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as the Company may require for the purpose of giving full effect to condition 17 (including doing all such things as may be necessary to register the Company as owner of registrable rights).

17.7. The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.

17.8. For the avoidance of doubt other than as expressly agreed in writing nothing shall be interpreted as granting the Customer any rights in the Company's or any third party's

Intellectual Property Rights (including any software or any development or enhancement of any software by a third party).

17.9. Where the Services involve the use of any Customer Background Intellectual Property, the Customer hereby grants to the Company a non-transferable, non-exclusive right and license for the duration of the Contract to use, copy, modify and prepare derivative works of any such Background Intellectual Property to the extent necessary to enable the Company to perform the Services and provide the Deliverables and Prototypes in accordance with the Contract.

17.10. Subject to condition 17.7, the Company hereby grants to the Customer a non-exclusive, non-transferable licence to use the Deliverables and Prototypes as follows:

(a) use of the Deliverables and Prototypes shall be solely for the Customer's own internal business purposes to which the Deliverables and Prototypes relate and may be such use of a Deliverable and Prototype as is expressly notified by the Company to the Customer and shall not include allowing the use of the Deliverables and Prototypes by, or for the benefit of, any person other than an employee of the Customer;

(b) the Customer may not use the Deliverables and Prototypes other than as specified in this condition 17 or the Quotation without the prior written consent of the Company and the Client acknowledges that additional fees may be payable on any change of use approved by Company;

(c) the Customer may only make as many copies of the Deliverables as are expressly permitted by the Company. The Customer shall take such steps to prevent unauthorised copying of any Deliverables or Prototypes as it would take to protect its own similar information and materials of equivalent value and importance to the Deliverables and Prototypes.

17.11. except as expressly permitted in this condition 17 or otherwise agreed in writing by the Company the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to any Deliverables or Prototypes.

17.12. The Customer shall permit the Company to inspect and have access to any premises, and to the computer equipment located there, at or on which the Deliverables and any Prototypes are being kept or used, and any records kept pursuant to the licence granted in this condition 17, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that the Company provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

## 18. CONFIDENTIALITY

18.1. Both parties shall treat Confidential Information obtained from the other as confidential and shall not without the prior written agreement of the other at any time hereafter (save as required by law or any regulatory organisation with authority over it) disclose such information to any third party (other than those of its officers, employees advisers and agents whose responsibilities require them to know the same) or use it for any purposes other than for the performance of its obligations pursuant to the Contract (unless such information is in the public domain or is already known to the non-disclosing party otherwise than as a result of a breach of any duty of confidentiality owed in respect of such information).

18.2. The parties agree that unless otherwise agreed by the parties, any confidentiality agreement between the Customer and the Company signed on or before the date of the Contract and relating to the subject matter of the Contract shall remain in full force and effect.

## 19. ANTI-BRIBERY AND ANTI-SLAVERY

19.1. Each party shall comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**) and shall have and maintain in place throughout the term of the Contract its own policies and procedures to ensure compliance with the Relevant Requirements.

19.2. Each party shall comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force including the Modern Slavery Act 2015.

## 20. DATA PROTECTION

20.1. Under this condition 20 references to **Data Protection Legislation** shall mean (i) unless and until the General Data Protection Regulation ((EU) 2016/679 (**GDPR**)) is no longer directly applicable in the UK, the GDPR and the Data Protection Act 2018 and any other national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018.

20.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 20 is in addition to, and does not relieve, remove or replace, both parties' obligations under the Data Protection Legislation.

20.3. In respect of personal data of which the Customer is the controller and the Company is the processor (as the terms controller and processor are defined in the Data Protection Legislation), the parties agree as follows:

(a) the Quotation sets out the scope, nature and purpose of processing by the Company, the duration of the processing and the types of personal data (as the term **personal data** is defined in the Data Protection Legislation) processed by the Company on behalf of the Customer (**Personal Data**) and categories of data subject (as the term **data subject** is defined in the Data Protection Legislation);

(b) The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Company for the duration and purposes of the Contract;

(c) The Customer gives the Company general authorisation to appoint sub-processors of Personal Data under the Contract;

(d) The Company will inform the Customer of any intended changes concerning the addition or replacement of sub-processors of Personal Data under the Contract (**Change Notice**), thereby giving the Customer the opportunity to object to such changes. If the Customer does not notify any objection to the Company within 5 days of receipt of a Change Notice, the Customer is deemed to have accepted the change. If, following receipt of a Change Notice, the Customer objects to the addition or replacement of the sub-contractor who is processing Personal Data the Customer must notify the Company in writing within 5 days of receipt of the Change Notice outlining the reasons for its objection (**Objection**).

(e) Following receipt of an Objection the parties shall discuss a commercially reasonable alternative way of processing the Personal Data that is the subject of the Change Notice. At any time following receipt of an Objection and where no alternative arrangement can be agreed the Company may at its discretion either not appoint the subcontractor to process Personal Data or may by giving notice to the Customer cancel the Contract or suspend deliveries of Products and/or Services under the Contract without any liability to the Customer.

(f) The Company confirms that it has entered or (as the case may be) will enter with the sub-processor into a written agreement incorporating terms which are substantially similar to those set out in this condition 20. Where any sub-processor fails to fulfil its data protection obligations in relation to Personal Data that the Company is processing on the Customer's behalf, the Company shall remain fully liable for the performance of the sub-processor's obligations.

20.4. The Company shall, in relation to any Personal Data processed by it as processor on behalf of the Customer in connection with the performance by the Company of its obligations under the Contract:

(a) process that Personal Data only on the Customer's written instructions unless the Company is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Company to process Personal Data (**Applicable Laws**). Where the Company is relying on laws of a member of the European Union or European Union law as the basis for processing of Personal Data, the Company shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Company from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental

loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by the Company);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and conditions required under the Data Protection Legislation for transfers outside the European Economic Area fulfilled;

(e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Customer without undue delay on becoming aware of a Personal Data breach;

(g) at the Customer's written direction, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the Personal Data. The Customer shall pay the Company's reasonable costs and expenses associated with returning any data to it; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this condition 20.4 and allow for audits by the Customer or its designated auditor.

## 21. NON SOLICITATION

21.1. Both during the Contract and for a period of twelve months after the termination of the Contract the Customer shall not (without the Company's prior written consent) directly or indirectly solicit or entice away (or attempt to solicit or entice away) any senior staff of the Company who have been engaged in the provision of the Products and/or Services or the management of the Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of a national advertising campaign open to all-comers and not specifically targeted at the Company's staff.

21.2. If the Customer commits any breach of condition 21.1, the Customer shall, without prejudice to any other rights or remedies of the Company, on demand, pay to the Company a sum equal to one year's basic salary or the annual fee that was payable by the Company to that employee, worker or independent contractor plus the recruitment costs incurred by the Company in replacing such person.

## 22. ASSIGNMENT

22.1. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.

22.2. The Company may at any time assign, transfer, mortgage, charge, sub-contract or deal in any other manner with any or all of its rights and obligations under the Contract.

22.3. To the extent that the Customer's consent is required by law to novate the burden of the Contract to a third party the Customer shall not unreasonably refuse or delay its consent.

## 23. FORCE MAJEURE

23.1. Neither party shall be liable for delay in performing or failure to perform obligations under this Contract if the delay or failure results from "force majeure". For the purposes of the Contract "**force majeure**" shall mean any Act of God war riot act of terrorism outbreak of hostilities strike or other industrial action of any kind malicious damage default of suppliers or sub-contractors accident failure or breakdown of plant or machinery fire flood explosion any act of local or national government or authority and any cause or circumstance whatsoever outside the reasonable control of the parties.

23.2. In the event of any delay or failure under the Contract resulting from "force majeure" the affected party may rely on the provisions of this condition for exemption from liability for non-performance part performance defective performance or delay and if any such delay or failure continues for a period in excess of 120 consecutive days either party shall have the right to terminate the Contract immediately by giving written notice to the other party.

## 24. GENERAL

24.1. Any notice given pursuant to this Contract shall be in writing and may be sent by first class pre-paid or registered or recorded delivery post or facsimile transmission to the party to whom it is addressed at his or its address as herein specified or subsequently notified and if sent by first class pre-paid or registered or recorded delivery post shall be deemed to have been received two working days after the date of posting and if sent by facsimile shall be deemed to have been received at the time transmission was duly completed. A notice given under the Contract is not valid if sent by e-mail. This clause does not apply to the service of any proceedings or other documents in any legal action.

24.2. It is acknowledged and agreed that the Contract (including the documents and instruments referred to herein) (the "**Documents**") shall supersede all prior representations arrangements understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto;

24.3. The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Documents or for any breach of any representation not contained in the Documents (unless such misrepresentation or representation was made fraudulently);

24.4. It is further acknowledged and agreed that no representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Documents.

24.5. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

24.6. No purported variation, change or modification of these Terms shall be valid unless confirmed in writing in a document signed by authorised representatives of both parties on or after the date of this Contract which expressly states that it amends this Contract.

24.7. Should any condition or provision of these Terms be held to be invalid or unenforceable such finding shall not affect the validity of the remaining conditions and provisions of these Terms.

24.8. These Terms are drafted in the English language. If the Contract is translated into any other language, the English language version shall prevail. Any notice given under or in connection with the Contract shall be in the English language. All other documents provided under or in connection with the Contract shall be in the English language, or accompanied by a certified English translation. If such document is translated into any other language, the English language version shall prevail unless the document is a constitutional, statutory or other official document.

24.9. Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

24.10. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24.11. A third party shall have no right to enforce these Terms under the Contracts (Rights of Third Parties) Act 1999.

24.12. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

24.13. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

#### Schedule 1

##### INTERPRETATION

1. In these Terms the following words have the following meanings:

**"Acceptance Tests"**: the tests of the Products and/or Prototypes after delivery to be agreed in accordance with Condition 8.1;

**"Background Intellectual Property"**: any Intellectual Property Rights that are used in the course of or in connection with the provision of the Services that were: (a) created and/or developed independently of the Contract; and/or (b) created and/or developed before the effective date of the Contract;

**"Company"**: the Gill group company named in the Quotation as the supplier of the Products and/or Services;

**"Confidential Information"**: all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its **Representatives**) to the other party and that party's Representatives in connection with the Contract, concerning: (a) the existence and terms of the Contract; (b) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); (c) any information developed by the parties in the course of carrying out the Contract;

**"Contract"**: any Contract between the Company and the Customer for the sale and purchase of the Products and the Services, incorporating these Terms and formed in accordance with condition 2.5;

**"Customer"**: the person(s), firm or company who purchases the Products and Services from the Company;

**"Customer Background Intellectual Property"**: all Background Intellectual Property owned by the Customer;

**"Customer Information"**: the information that the Customer provides to the Company in relation to the Products and/or the Services including all relevant details which relate to the Customer's requirements for the provision of the Products and/or Services;

**"Customer's Representative"**: any representative of the Customer;

**"Deliverables"**: any deliverables produced by the Company for the Customer in the performance of the Services in any form including reports, feasibility studies and including those deliverables set out in the Quotation;

**"Foreground Intellectual Property"**: any Intellectual Property Rights that arise or are obtained or developed by either party in the course of or in connection with the Services;

**"Intellectual Property Rights"**: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including without limitation all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**"Operating Manuals"**: all operating manuals, specifications, risk assessment method statements and other manufacturer documentation relating to the Products;

**"Price"**: has the meaning specified in condition 5.1;

**"Products"**: collectively or individually the products agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them) as more particularly described in the Quotation but excluding any Prototypes;

**"Prototypes"**: any prototype products produced by the Company for the Customer in the performance of the Services including those prototype products set out in the Quotation;

**"Quotation"**: the proposal attached to these Terms containing details of the Products and the Services, delivery and Price;

**"Services"**: the development, engineering, consultancy and other services to be provided by the Company under the Contract as set out in the Quotation together with any other services which the Company provides or agrees to provide to the Customer;

**"Software"**: any software (including any firmware or graphical user interface) supplied to the Customer with or as part of the Products and Prototypes;

**"Tests"**: the pre-delivery tests referred to in condition 7.1(a);

**"Warranty Period"**: the period from the date of delivery of the Products and ending 12 months after the date of delivery of the Products, or such other period as may be specified in the Quotation;

2. In these Terms, the following rules apply: (a) Words in the singular include the plural and in the plural include the singular; (b) A reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (c) A reference to a statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; (d) Unless the context otherwise requires, the words **including**, **include** and **in particular** and words of similar effect shall not be deemed to limit the general effect of the words which precede them (e) The headings in this Contract are for ease of reference only and shall not affect its construction or interpretation (f) A reference to writing or written includes faxes and e-mail.

3. In the case of any inconsistency between the Quotation and these Terms, these Terms will prevail.