

## 1. INTERPRETATION TERMS AND CONDITIONS OF SALE

"Buyer" means the person or company whose Order for the Products is accepted by the Company;

"Company" means Delavan Limited;

"Contract" means any contract between the Company and the Buyer for the sale and purchase of the Products;

"Incoterms 2010" means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2010.

"Order" means the written purchase order placed by the Buyer;

"Products" means any products which the Company is to supply to the Buyer (including any of them or any part of them). The dimensional and other data published by the Company in respect of the Products is for guidance only and is subject to change without notice. If such data is critical to requirements, please contact the Company.

## 2. BASIS OF SALE

2.1 All contracts for sale of products made by or on behalf of the Company will be on these terms and conditions (the "Conditions") to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase orders, confirmation of order or similar document.)

2.2 Orders are in all cases subject to written acceptance by the Company. No addition to or variation of these Conditions and no oral stipulation or representation shall be binding on the Company unless expressly agreed to in writing and signed by a director or the secretary of the Company on its behalf.

2.3 Save as otherwise provided no Order may be cancelled by the Buyer once it has been accepted by the Company except with the written agreement of the Company and on terms that the Buyer shall indemnify the Company in full against all losses (including loss of profit), costs, damages, charges and expenses suffered or incurred by the Company as a result of such cancellation.

2.4 Save as otherwise provided the Buyer may in writing amend an Order only if the amendment is given within 24 (twenty four) hours of it being placed by the Buyer.

## 3. PRICE

3.1 Prices of all Products shall be those agreed or quoted by the Company. The Company shall have the right to change its prices or withdraw any Products from the range of Products offered by the Company without notice, except where the Company has expressly stated in writing that a price is firm and during what period the price will be held firm.

3.2 Except as otherwise expressly stated, all prices quoted are (i) exclusive of any value added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Products. All Orders are subject to minimum charge of £50.00.

## 4. PAYMENT

4.1 The Company may invoice the Buyer for the Products at any time after delivery. Time for payment shall be of the Essence. Unless otherwise expressly stated in writing, prices are due and payable to, and at such address or bank accounts as may be designated by the Company, without set-off, withholding, abatement, discount or counterclaim in the currency specified overleaf in England in immediately available funds 30 days from the date of the Company's invoice. Payment by cheque or other negotiable instrument is ineffective until it is honoured and the Company's bank account is credited with the amount due.

4.2 If the Buyer fails to make any payment under this Contract on the due date the Company shall be entitled (without prejudice to any other rights or remedy it may have) to cancel or suspend any further deliveries to the Buyer under any Order and charge the Buyer interest on the amount unpaid from the due date until payment is made in full at the rate of 3% p.a. above the base rate for the time being of HSBC PLC. All payments payable to the Company under this Contract shall become due immediately upon termination of this Contract despite any other provision.

4.3 The Company shall at any time be entitled to appropriate any payment made by the Buyer in respect of any Products or services in settlement of such invoices or accounts in respect of such Products or services as the Company may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary to the Buyer.

## 5. DELIVERY

5.1 Delivery of the Products shall be made FCA (Incoterms 2010). If carriage is required the Products shall be delivered by such means as the Company thinks fit unless the Buyer has specified in its Order the details of the contract with the carrier which it reasonably requires having regard to the nature of the Products and the other circumstances of the case. The costs of such transport shall be borne by the Buyer. Where the Buyer arranges for carriage the Buyer will take delivery of the Products within 3 days of the Company giving it notice that the Products are ready for delivery.

5.2 The Company shall endeavour to comply with delivery dates quoted by it but time for delivery shall not be of the essence and the Company, subject to the other provisions of these conditions, shall not be liable for any failure, delay or error in delivery nor shall it be liable for any consequential loss (including loss of profit) costs, damages, charges or expenses arising directly or indirectly therefrom however caused.

5.3 If the Buyer fails to take delivery of any Products when they are ready for delivery or to provide adequate instructions, documents, licenses or authorisations required to enable the Products to be delivered on time (except because of the Company's fault) the Products will be deemed to have been delivered and accepted (without prejudice to its other rights) the Company may: (a) store or arrange for the storage of the Products until actual delivery or sale and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or (b) following written notice to the Buyer, sell any of the Products at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.

5.4 If the Buyer orders incorrect Products the Company will at its discretion accept the return of such Products provided that: (a) the Products are returned unused and, in the Company's opinion, are in good condition; and (b) the Company will charge a 25% restocking fee; and (c) the Buyer will pay for any and all costs involved in returning the Products; and (d) the Products are standard items and in the reasonable opinion of the Company can be re-sold within twelve months of the date of their return.

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5.5 The Company shall have no liability for any claim made after shipment in respect of any defect in the Products, which would be apparent on inspection, or in respect of any damage or loss during transit.

5.6 The Buyer may not reject any Products by reason of short delivery. The Company will endeavour to supply the exact quantity of Products ordered but the Company may supply up to 10% more or less than the exact quantity ordered. A pro rata charge shall be added to and form part of the price for the Products in the case of any oversupply. If the Company fails to supply the exact quantity of Products ordered, otherwise than due to the Buyer's default or a cause beyond the Company's reasonable control (in which circumstances there shall be no variation to the price), the Company's liability shall be limited to: (1) allowing the Buyer a pro rata allowance to the price of the Products, or (2) the supply by the Company as soon as reasonably practicable of substantially similar products to replace the Products which the Company has failed to supply, or (3) the cost to the Buyer (in the cheapest available market) of substantially similar products to replace the Products which the Company has failed to supply over the price of such Products; whichever of the foregoing as the Company may elect.

5.7 The Company may deliver the Products by installments and/or perform any services in stages and shall be entitled to payment for all installments of Products and/or services. Without limiting the other provisions herein, no failure or defect in delivery in respect of any contract or installment shall enable the Buyer to repudiate or cancel any other Contract or installment.

### **6. RISK AND OWNERSHIP**

6.1 Unless otherwise agreed in writing, risk and title of ownership in respect of the Products supplied to the buyer shall pass to the customer upon dispatch from the Manufacturer's Widnes facility.

6.2 Risk of damage to or loss of the Products shall pass to the Buyer upon delivery. Ownership of the Products shall not pass to the Buyer until the Company has received in full all sums due to it in respect of (i) the Products and (ii) all other sums which are or which become due to the Company from the Buyer on any account.

6.3 Until ownership of the Products has passed to the Buyer, the Buyer shall: (a) hold the Products on fiduciary basis as the Company's bailee; (b) store the Products (at no cost to the Company) separately from all other goods of the Buyer 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 (d) maintain the Products in a satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company.

6.4 The Buyer may resell the Products before ownership has passed to it solely on the following conditions: (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall account to the Company accordingly; and (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

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

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

6.7 Notwithstanding that property in the Products has not passed to the buyer, the Manufacturer shall be entitled to maintain an action for the price under Section 49 of the Sale of Goods Act 1979.

### **7. SPECIFICATIONS, DESCRIPTIONS, DRAWINGS AND INTELLECTUAL PROPERTY.**

7.1 The Company reserves the right to make any changes in the specification of any Products and/or services which are required to conform with any applicable British, European or International health and safety and quality standards or statutory requirements. Where products are manufactured and/or services performed in accordance with information or drawings supplied by the Buyer or to its design or specification or where standard products and/or services of the Company are altered in accordance with the Buyer's instructions: (i) no guarantee or warranty is given by the Company as to the practicability, efficiency, safety or otherwise of the Products and/or services. (ii) the Buyer shall indemnify and keep the Company indemnified against all liabilities in relation to: (a) such Products and/or services (a) infringing any intellectual property right including without prejudice to the generality of the foregoing patents registered designs and copyright or (b) breaching the provision of any statute, statutory instrument or regulation; (b) any impracticability, inefficiency or lack of safety or other defect in the Products and/or services where such defect is due (whether in whole or in part) to faults or omissions in such information, drawings, design, specification or instructions. No variation in the specification or design of any Products and/or services which in the reasonable opinion of the Company does not affect the suitability of the Products and/or services for the purpose for which they are supplied by the Company will constitute a breach of contract or impose upon the Company any liability whatsoever. Unless otherwise expressly agreed in writing the Company shall be under no obligation to supply goods and/or services in accordance with any specification, information, drawings or sample provided by the Buyer.

7.2 All drawings, models and similar items prepared by the Company and the copyright and other intellectual property rights therein shall remain the property of the Company and such materials shall be returned by the Buyer on demand. All patents, registered designs, know-how or other intellectual property rights, samples, models, designs and drawings relating to goods and/or services their development or creation shall remain the Company's property, shall be treated as confidential and shall not be copied, reproduced or disclosed to any third party without the Company's prior written consent.

7.3 No right or license is granted to the Buyer under any patent, copyright, registered design or other intellectual property right except the right to use or re-sell Products or use services supplied in the ordinary course of the Buyer's business and any grant of shop rights to the Buyer by the Company is hereby specifically excluded.

7.4 The Company will be under no liability whatsoever to the Buyer in respect of any loss, damage or claim incurred by or made against the Buyer should any Products and/or services infringe any intellectual property right including, without prejudice to the generality of the foregoing, patents, registered designs, design right and copyright or the provision of any statute, statutory instrument or regulation.

7.5 The Buyer shall not without the Company's prior consent allow any trademarks of the Company or other words or marks applied to the Products to be obliterated, obscured or omitted nor add any additional marks or words.

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### **8. INSPECTION**

It shall be the responsibility of the Buyer to inspect and check the Products as soon as reasonably practicable after delivery to ensure that the quality, condition, quantity and specification of the Products conform to the instructions in the Order. All returns of defective Products must be authorised in advance in writing by the Company and returned to the Company's place of business at the Buyer's cost and risk.

### **9. WARRANTY**

9.1 The Company warrants that (subject to the other provisions of these Conditions) upon delivery the Products will comply with the specification.

9.2 The Company shall not be liable for a breach of the warranty in condition 9.1 unless a claim is brought within 12 months from the date of delivery or 90 days from the date of installation whichever is earlier.

9.3 The Company shall not be liable for a breach in condition 9.1 if; (a) the failure to comply with the specification arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; or (b) the Buyer alters or repairs such Products without the written consent of the Company; or (c) the failure to comply with the specification arises from any design defect in any drawing, design or specification supplied or approved by the Buyer. (d) The identification or serial number of any of the Products thereon has been altered, defaced or removed or if Products (including Products on which services have been performed) have not been properly maintained in accordance with the Company's recommended maintenance procedure or have been subjected to any misuse, unauthorised repair, replacement, modification or alteration. (e) The failure results from fair wear and tear. (f) The failure results from and is caused by parts or aspects of Products other than the Products or services supplied by the Company.

9.4 The Buyer shall indemnify the Company in respect of any warranty investigations conducted by it which results in a refusal of a warranty claim for any of the reasons specified above.

### **10. LIABILITY**

10.1 Nothing in these Conditions shall exclude or limit the Company's liability for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.

10.2 The Company shall not be liable to the Buyer for any shortfall in the quantity of Products delivered unless the Buyer inspects the Products and notifies the Company of any claim within 14 days of delivery and where any such valid claim is made the Company shall supply the shortfall free of charge at the Buyer's risk or at the Company's sole discretion, reduce the Company's invoice by the sum equivalent to the shortfall but the Company shall have no further liability to the Buyer.

10.3 Where any valid claim is brought under condition 10.2 the Company shall either: (a) replace the Product(s); or (b) repair the Product(s); or (c) refund to the Buyer the price of the Products (or a proportionate part of the price) free of charge save for transport costs or provide the Buyer with credit against future orders but the Company shall have no further liability to the Buyer.

10.4 Except as expressly provided in these conditions no warranty, condition, undertaking or term, express or implied, statutory or otherwise as to the condition, quality, performance, durability or fitness for purpose of the Products is given or assumed by the Company and all such warranties, conditions, undertakings and terms are hereby excluded insofar as permitted by law. The Company shall not in any case be liable to the Buyer or to any other party for direct, special, incidental, consequential, indirect or similar loss or damage (including all manner of costs, fees and expenses including loss of profit) arising from breach of warranty, breach of contract, negligence or any other cause howsoever except as expressly provided in these conditions and insofar as permitted by law.

### **11. THIRD PARTY RIGHTS**

11.1 No person who is not a party to the Contract (save for any Group Company) (including any employee, officer, agent, representative or sub-contractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provisions of the Contract which expressly or by implication confers a benefit on that person without the express prior agreement in Writing of the Company and the Customer which agreement must refer to this Condition 11.1

11.2 Even if a person who is not a party to the Contract (including any Group Company employee, officer, agent, representative or sub-contractor of either party) has a right to enforce any provisions of this Agreement by virtue of Section 1 of the Contracts (Rights of Third Parties) Act 1999, the parties may, notwithstanding Section 2(1) of the Contracts (Rights of Third Parties) Act 1999, vary or cancel this Agreement by agreement between them without requiring the consent of such third party.

### **12. FORCE MAJEURE**

The Company shall not be liable to the Buyer in any manner or be deemed to be in breach of this Contract because of any delay in performing or any failure to perform any of the Company's obligations under this Contract if the delay or failure was due to any cause beyond the Company's reasonable control.

### **13. INSOLVENCY AND DEFAULT**

13.1 The Buyer fails to pay the price when due or otherwise breaches any contract with the Company; or

13.2 The Buyer is, or for statutory purposes is deemed to be or appears to be unable to pay its debts as they become due, or the value of its assets is less than the amount of its liabilities (including contingent and prospective liabilities) or the Buyer otherwise becomes insolvent or suspends payment or threatens to do so or ceases to trade; or

13.3 Steps are taken to:- (i) propose any composition, scheme of arrangement, compromise or arrangement involving the Buyer and its creditors generally; or (ii) obtain an administration order or appoint any administrative or other receiver or manager in relation to, or put in force any legal process against, the Buyer or any of its property; or (iii) enforce any charge or other security over the Buyer's property; or (iv) repossess any goods in the Buyer's possession under any agreement; or (v) wind-up or dissolve the Buyer; or

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13.4 Where the Buyer is an individual or partnership, he or any partner dies or any steps are taken with a view to making a bankruptcy order against him or any partner; or

13.5 Outside England and Wales anything corresponding to any of the above occurs; or

13.6 The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer. Then in the cases of 13.1 to 13.5 set out above the Buyer shall notify the Company forthwith in writing of such event and in all cases (12.1 to 12.6) the Company may (at its discretion, whether or not it has received notice from the Buyer as aforesaid, and without prejudice to its other rights hereunder or otherwise) at any time by notice to the Buyer do any one or (to the extent not inconsistent with one another) more of the following:- (i) terminate, cancel and/or rescind the contract and any other contracts with the Buyer; (ii) revoke any express or implied authority to sell, use or consume any Products the property in which has not passed to the Buyer ("relevant Products"); (iii) require the Buyer to deliver to the Company any relevant Products and the Client shall do so failing which the Company may repossess them and enter the premises where they are or are thought to be and sever them therefrom, without liability for any resulting damage, and the Client shall indemnify the Company against all liabilities in relation to such action; (iv) re-sell any relevant products or any other Products to a third party without giving notice to the Buyer of the Company's intention to re-sell; (v) declare (whereupon there shall forthwith become) immediately due, payable and interest-bearing under clause 4.2 above any amounts owed by the Buyer to the Company under any contract; (vi) suspend any deliveries or provision of services to be made under any contract with the Buyer; (vii) proceed against the Buyer for the price of the Products and/or services and/or damages; (viii) require the Buyer to indemnify and keep the Company indemnified against all liabilities in relation to any purported cancellation or failure to take delivery, including without limitation the payment of license fees or other fees incurred by the Company in the course of its business of manufacturing and/or supplying thereof together with the cost of any material, plant or tools used, or intended to be used, for the Buyer's order(s), the cost of labour and other overheads, and redundancy payments primarily attributed to such purported cancellation. If the Buyer does or fails to do anything which would entitle any person to appoint a receiver of the whole or any part of the Buyer's assets or which would entitle any person to present a Petition for an Administration order or the Winding Up of the Buyer makes any composition with its creditors or suffers any execution to be levied upon its property, or ceases or threatens to cease, to carry on business or commit any breach of this or any other Contract between the Company and the Buyer, the Company may without prejudice to any of its other rights under these conditions stop any goods in transit and/or suspend further deliveries forthwith and/or by notice in writing to the Buyer terminate the Contract.

### **14. WAIVER**

No waiver by the Company of any breach of the Contract by the Buyer shall be construed as a waiver or any subsequent breach of the same or any other provision.

### **15. SEVERANCE**

If any provision of these Conditions or any part thereof is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

### **16. GOVERNING LAW AND JURISDICTION**

These Conditions shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

### **17. DATA PRIVACY CLAUSE**

17.1 Compliance with Law. The products and/or services being provided require the collection of Personal Information (information and data exchanged in connection with this Agreement related to any identified or identifiable natural person or, in case of a conflict with applicable law, which is subject to any applicable data privacy laws). The parties will comply with applicable data privacy laws governing Personal Information processed in connection with this Agreement. The parties take all reasonable commercial and legal steps to protect Personal Information.

#### **17.2 Rights and Obligations.**

- a. If Buyer provides Seller with Personal Information, Buyer will ensure that it has the legal right to do so. Buyer will notify the individuals whose Personal Information it has provided to Seller prior to providing it to Seller.
- b. Seller may share Personal Information with Seller's service providers in accordance with applicable data privacy laws and with appropriate protections.
- c. Seller may store Personal Information on servers located and accessible globally by UTAS entities and their service providers with appropriate protections in place.
- d. If Seller processes Personal Information under this Agreement, Seller will retain the Personal Information for the term of this Agreement and thereafter as required under this Agreement, to protect Seller's legal rights, or as required or permitted by law or audit requirements. If processes Personal Information for purposes separate and apart from this Agreement, Seller serves as a controller and assumes legal obligations as a controller, including for defining the appropriate retention period.
- e. If the Personal Information is involved in a Data Breach Incident (set of circumstances that involve actual or a reasonable possibility of unauthorized access to or possession of, or the loss or destruction of, Personal Information), the party on whose system the data was stored is responsible for any notifications and associated costs. Unless prohibited by law or a regulator with jurisdiction over a party, the notifying party shall make reasonable efforts to coordinate with the other party to allow input into the notification before it is made.
- f. While performing under this Agreement, if a party learns of any: (i) complaint or allegation indicating a violation of the applicable data privacy laws regarding Personal Information; (ii) request from one or more individuals seeking to access, correct, or delete Personal Information; or (iii) inquiry or complaint from one or more individuals in relation to the processing of Personal Information, the party will exercise reasonable efforts to promptly notify the other party in writing, except to the extent prohibited by law, law enforcement, or a regulator with jurisdiction over such party. The parties shall provide reasonable commercial assistance to each other in investigating the matter, identifying the relevant information, preparing a response,

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implementing a remedy, and/or cooperating in the conduct of and defending against any claim, court or regulatory proceedings.

### **18. International Trade Compliance Requirements**

18.1 Customer shall comply with all International Trade Compliance ("ITC") laws and regulations ("ITC Laws"). ITC Laws mean the import, customs, export control, sanctions and U.S. antiboycott laws, regulations, and orders applicable at the time of the placement of an Order or the import, export, re-export, transfer, disclosure, or provision of Products or technical data, including, without limitation, the (i) Export Administration Regulations ("EAR") administered by the Bureau of Industry and Security, U.S. Department of Commerce, 15 Code of Federal Regulations (C.F.R.) Parts 730-774; (ii) International Traffic in Arms Regulations ("ITAR") administered by the Directorate of Defense Trade Controls, U.S. Department of State, 22 C.F.R. Parts 120-130; (iii) Foreign Assets Control Regulations and associated Executive Orders administered by the Office of Foreign Assets Control ("OFAC"), U.S. Department of the Treasury, 31 C.F.R. Parts 500-598; (iv) Internal Revenue Code, 26 U.S.C. § 999, enforced by the U.S. Department of Treasury; (v) International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C., § 1701 et. Seq.; (vi) Customs regulations administered by U.S. Customs and Border Protection, 19 United States Code (U.S.C.) and Title 19 C.F.R.; and (vii) applicable import, customs and export laws and regulations of other countries, except to the extent they are inconsistent with U.S. law. If Customer is not a U.S. person or entity, it shall nevertheless comply with all ITC Laws fully and to the extent it would be required to do so if it were a U.S. person or entity.

18.2 It is understood that the authorization or written permission of the U.S. or other governments or union of states (e.g. the European Union) may be required prior to the shipment of any Product or the transfer of any technical data. The Company agrees to notify Distributor of the jurisdiction and classification of Products and attendant technical data by including such information on shipping invoices or similar documentation. Customer shall be responsible for complying with all ITC Laws and for obtaining all required licenses and authorizations to export any Products or technical data to the Territory, based on the ultimate customer, destination and end use. The Company agrees to cooperate reasonably and exercise reasonable efforts to support Customer in obtaining the necessary licenses or authorizations required to export Products or technical data to the Territory. The failure or inability of customer to obtain any necessary license or authorization under any applicable ITC Laws shall not entitle Customer to cancel or terminate any Order, or terminate its obligation to pay for, or reduce the price of, any Order. Customer agrees to perform due diligence for all prospective sales of Products or transfers of technical data to ensure that the end uses and end users of the Products and technical data are permissible under the ITC Laws.

#### 18.3 Denied Party Screening/Sanctions.

18.3.1 The Customer warrants that it is not listed on, and is not owned or controlled by, affiliated with or acting on behalf of any person or entity listed on, the OFAC Specially Designated Nationals and Blocked Persons List, the Denied Persons List, or any other list of restricted or denied parties maintained by the U.S. Departments of Commerce, Treasury, or State, or any non-U.S. counterpart of the foregoing.

18.3.2 The Customer shall perform denied party screening on its employees and all parties whom the Customer engages or solicits in connection with the placement of Orders and the sale of Products under this Agreement.<sup>1</sup> This requirement is intended to ensure that the Customer identifies any potential customer, person or entity with whom the Customer engages in connection with this Agreement that is ineligible to perform such activity or ineligible to be a customer because of any embargo, sanction, and debarment or denied party designation.

18.3.3 In furtherance of its ITC obligations under this Agreement, Customer shall not:

18.3.3.1 Engage in or facilitate, directly or indirectly, or be involved in any matter under this Agreement with, the export, re-export, or re-transfer of any Products or technical data to Cuba, Iran, North Korea, Sudan, Syria, or the Crimea region of Ukraine, or to the governments of those countries, or contrary to any applicable Russian Sectoral Sanctions<sup>2</sup>; and

18.3.3.2 Engage any person or entity to perform transactions, dealings, activities or services under this Agreement or solicit any potential customer when such person or entity is identified as a denied party pursuant to any embargo, sanction,

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<sup>1</sup> See [www.treasury.gov/resource-center/sanctions/SDN-List/Pages/consolidated.aspx](http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/consolidated.aspx) for US sanctions screening list; <http://www.international.gc.ca/sanctions/index.aspx?lang=eng> for Canadian sanctions screening list; and [http://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions\\_en](http://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions_en) for European Union sanctions screening list.

<sup>2</sup> See <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>, and Parts 742.8, 742.9, 742.10 and 746 of the EAR for a current list of restricted countries under U.S. law.

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debarment or denied party designation maintained by the U.S. government or any non-U.S. government or union of states.

- 18.4 If any Product is a defense article or if Customer provides a defense service under the ITAR, Customer shall, if and as required, become registered with the Directorate of Defense Trade Controls (if it is not already registered) as a Broker and/or an Exporter under the ITAR and shall submit annual brokering reports. Customer shall maintain registration throughout the period of the Agreement and will provide evidence of registration annually to the Company.
- 18.5 If the Company agrees to become involved in any return of merchandise to the United States or other applicable non-U.S. jurisdiction for warranty or other purposes, Customer agrees to provide the Company with sufficient advance notice to enable it to obtain any authorizations needed to comply with U.S. or other applicable import or export requirements.
- 18.6 The Customer hereby certifies that it has not paid, or offered or agreed to pay, or has caused to be paid, or offered or agreed to be paid directly or indirectly, in respect of this Agreement any political contributions, fees or commissions (as defined in Part 130 of the ITAR), and it will not do so in connection with its work related to this Agreement.
- 18.7 Any Orders or other actions made by Customer in contravention of ITC Laws are outside the scope of authority granted to Customer under this Agreement and shall be null and void. Customer shall not ship any Products sold under this agreement in contravention of ITC Laws. Customer agrees to provide immediately to the Company any information Customer becomes aware of that would indicate Products or technical data may have been diverted to an impermissible end use or end user. Customer's obligations to comply with ITC Laws will survive any expiration or termination of this Agreement.

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**1. ACCEPTANCE**

- A. Seller's offer to sell is conditioned upon Buyer's assent to the terms and conditions of sale contained herein. Any other terms or conditions at variance with these terms and conditions and all provisions of any order or other writing submitted by Buyer which purport to impose any obligation on Seller to grant any rights to Buyer other than as stated herein are hereby rejected and shall be null and void. Buyer's acceptance of any products shall be deemed to be upon the terms and conditions specified herein.
- B. Any order received as a result of Seller's quotation is subject to approval by Seller's management.

**2. CONTINGENCIES**

Seller reserves the right to cancel without liability, at any time, any contract or order or unfilled portions thereon, when performance of the same is prevented, directly or indirectly, by any cause whatsoever beyond Seller's reasonable control.

**3. WARRANTY AND LIMITATION OF LIABILITY**

Seller warrants all products against defects in materials or workmanship under normal use, maintenance and service for one year from date shipment from Seller's factory. The sole and exclusive obligation of Seller under this warranty shall be to replace or, at Seller's option, to repair, without charge, any product which is determined by Seller to be defective after the product is returned to Seller's factory in accordance with Paragraph 7 below, shipping costs prepaid by Buyer. Except where caused by the negligence of the seller, in no event shall Seller be liable for indirect, special, or consequential damages of any nature whatsoever (including, without limitation, lost profits) or for personal injuries or property damage resulting from any use or inability to use Seller's product. **SELLER SHALL NOT BE LIABLE FOR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** No person, including any dealer or representative of Seller, is authorised to make any representation or warranty on behalf of Seller in addition to or inconsistent with these provisions. Buyer agrees to indemnify and hold Seller harmless from all third party claims in excess of the warranties outlined herein.

**4. NON-COMPLIANCE**

Buyer's failure to comply with the terms of payment shall be a material breach of the contract and shall give Seller the right to suspend further shipments until Buyer pays for all previous shipments. In addition, if in the judgement of Seller, Buyer's financial condition shall at any time become impaired, Seller shall have the right to suspend further shipments until Buyer furnishes Seller with adequate assurances of payments.

**5. CREDIT APPROVAL**

Payment terms covered by this quotation are subject to Seller's credit approval.

**6. DELIVERY**

Unless otherwise agreed in writing delivery shall be EXW Seller's factory. In the absence of specific shipping instructions from Buyer, Seller, at Buyer's cost and expense, shall determine the method of shipment and the carrier.

**7. RETURN OF PRODUCTS**

Prior to returning any product, Buyer shall contact Seller's Production Planning Department and request authorisation for the return. Seller shall provide Buyer with an "Authorisation to Return Material (ARM) number. This ARM number is to be included on all documentation and outside packaging. Merchandise returned without authorisation shall not be accepted by Seller's Receiving Department. Buyer shall ship all products "Freight Prepaid".

**8. PROPRIETARY INFORMATION**

Buyer agrees that any data, such as Seller's specifications, drawings, software and information (including, without limitation, designs, reports, software documentation, manuals, models, process information), revealed by Seller to Buyer is proprietary to Seller and shall be kept in confidence by Buyer and treated with at least the same care and safeguards as applied to Buyer's own proprietary information. Such data shall not be duplicated, disclosed, or used without Seller's written permission.

**9. INSPECTION**

All products not rejected by Buyer within ten (10) days of receipt shall be deemed accepted.

**10. PAYMENTS**

All payments are to be remitted in US Dollars. Buyer is responsible for any taxes, fees or duties imposed by those other than the UK Government.

**11. GOVERNING LAW**

The terms and conditions stated herein shall be governed by and construed in accordance with the laws of England and subject to the Jurisdiction of the English Courts.

**TERMS AND CONDITIONS OF SALE 2018**

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**DATA PRIVACY CLAUSE**

1. **Compliance with Law.** The products and/or services being provided require the collection of Personal Information (information and data exchanged in connection with this Agreement related to any identified or identifiable natural person or, in case of a conflict with applicable law, which is subject to any applicable data privacy laws). The parties will comply with applicable data privacy laws governing Personal Information processed in connection with this Agreement. The parties take all reasonable commercial and legal steps to protect Personal Information.
2. **Rights and Obligations.**
  - 2.1. If Buyer provides Seller with Personal Information, Buyer will ensure that it has the legal right to do so. Buyer will notify the individuals whose Personal Information it has provided to Seller prior to providing it to Seller.
  - 2.2. Seller may share Personal Information with Seller's service providers in accordance with applicable data privacy laws and with appropriate protections.
  - 2.3. Seller may store Personal Information on servers located and accessible globally by UTAS entities and their service providers with appropriate protections in place.
  - 2.4. If Seller processes Personal Information under this Agreement, Seller will retain the Personal Information for the term of this Agreement and thereafter as required under this Agreement, to protect Seller's legal rights, or as required or permitted by law or audit requirements. If processes Personal Information for purposes separate and apart from this Agreement, Seller serves as a controller and assumes legal obligations as a controller, including for defining the appropriate retention period.
  - 2.5. If the Personal Information is involved in a Data Breach Incident (set of circumstances that involve actual or a reasonable possibility of unauthorized access to or possession of, or the loss or destruction of, Personal Information), the party on whose system the data was stored is responsible for any notifications and associated costs. Unless prohibited by law or a regulator with jurisdiction over a party, the notifying party shall make reasonable efforts to coordinate with the other party to allow input into the notification before it is made.
  - 2.6. While performing under this Agreement, if a party learns of any: (i) complaint or allegation indicating a violation of the applicable data privacy laws regarding Personal Information; (ii) request from one or more individuals seeking to access, correct, or delete Personal Information; or (iii) inquiry or complaint from one or more individuals in relation to the processing of Personal Information, the party will exercise reasonable efforts to promptly notify the other party in writing, except to the extent prohibited by law, law enforcement, or a regulator with jurisdiction over such party. The parties shall provide reasonable commercial assistance to each other in investigating the matter, identifying the relevant information, preparing a response, implementing a remedy, and/or cooperating in the conduct of and defending against any claim, court or regulatory proceedings.

**3. INTERNATIONAL TRADE COMPLIANCE REQUIREMENTS**

- 3.1. Customer shall comply with all International Trade Compliance ("ITC") laws and regulations ("ITC Laws"). ITC Laws mean the import, customs, export control, sanctions and U.S. antiboycott laws, regulations, and orders applicable at the time of the placement of an Order or the import, export, re-export, transfer, disclosure, or provision of Products or technical data, including, without limitation, the (i) Export Administration Regulations ("EAR") administered by the Bureau of Industry and Security, U.S. Department of Commerce, 15 Code of Federal Regulations (C.F.R.) Parts 730-774; (ii) International Traffic in Arms Regulations ("ITAR") administered by the Directorate of Defense Trade Controls, U.S. Department of State, 22 C.F.R. Parts 120-130; (iii) Foreign Assets Control Regulations and associated Executive Orders administered by the Office of Foreign Assets Control ("OFAC"), U.S. Department of the Treasury, 31 C.F.R. Parts 500-598; (iv) Internal Revenue Code, 26 U.S.C. § 999, enforced by the U.S. Department of Treasury; (v) International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C., § 1701 et. Seq.; (vi) Customs regulations administered by U.S. Customs and Border Protection, 19 United States Code (U.S.C.) and Title 19 C.F.R.; and (vii) applicable import, customs and export laws and regulations of other countries, except to the extent they are inconsistent with U.S. law. If Customer is not a U.S. person or entity, it shall nevertheless comply with all ITC Laws fully and to the extent it would be required to do so if it were a U.S. person or entity.
- 3.2. It is understood that the authorization or written permission of the U.S. or other governments or union of states (e.g. the European Union) may be required prior to the shipment of any Product or the transfer of any technical data. The Company agrees to notify Distributor of the jurisdiction and classification of Products and attendant technical data by including such information on shipping invoices or similar documentation. Customer shall be responsible for complying with all ITC Laws and for obtaining all required licenses and authorizations to export any Products or technical data to the Territory, based on the ultimate customer, destination and end use. The Company agrees to cooperate reasonably and exercise reasonable efforts to support Customer in obtaining the necessary licenses or authorizations required to export Products or technical data to the Territory. The failure or inability of customer to obtain any necessary license or authorization under any applicable ITC Laws shall not entitle Customer to cancel or terminate any Order, or terminate its obligation to pay for, or reduce the price of, any Order. Customer agrees to perform due diligence for all prospective sales of Products or transfers of technical data to ensure that the end uses and end users of the Products and technical data are permissible under the ITC Laws.
- 3.3. Denied Party Screening/Sanctions.
  - 3.3.a. The Customer warrants that it is not listed on, and is not owned or controlled by, affiliated with or acting on behalf of any person or entity listed on, the OFAC Specially Designated Nationals and Blocked Persons List, the Denied Persons List, or any other list of restricted or denied parties maintained by the U.S. Departments of Commerce, Treasury, or State, or any non-U.S. counterpart of the foregoing.



- 3.3.b. The Customer shall perform denied party screening on its employees and all parties whom the Customer engages or solicits in connection with the placement of Orders and the sale of Products under this Agreement.<sup>1</sup> This requirement is intended to ensure that the Customer identifies any potential customer, person or entity with whom the Customer engages in connection with this Agreement that is ineligible to perform such activity or ineligible to be a customer because of any embargo, sanction, and debarment or denied party designation.
- 3.3.c. In furtherance of its ITC obligations under this Agreement, Customer shall not:
- 3.3.c.1. Engage in or facilitate, directly or indirectly, or be involved in any matter under this Agreement with, the export, re-export, or re-transfer of any Products or technical data to Cuba, Iran, North Korea, Sudan, Syria, or the Crimea region of Ukraine, or to the governments of those countries, or contrary to any applicable Russian Sectoral Sanctions<sup>2</sup>; and
- 3.3.c.2. Engage any person or entity to perform transactions, dealings, activities or services under this Agreement or solicit any potential customer when such person or entity is identified as a denied party pursuant to any embargo, sanction and debarment or denied party designation maintained by the U.S. government or any non-U.S. government or union of states.
- 3.4. If any Product is a defense article or if Customer provides a defense service under the ITAR, Customer shall, if and as required, become registered with the Directorate of Defense Trade Controls (if it is not already registered) as a Broker and/or an Exporter under the ITAR and shall submit annual brokering reports. Customer shall maintain registration throughout the period of the Agreement and will provide evidence of registration annually to the Company.
- 3.5. If the Company agrees to become involved in any return of merchandise to the United States or other applicable non-U.S. jurisdiction for warranty or other purposes, Customer agrees to provide the Company with sufficient advance notice to enable it to obtain any authorizations needed to comply with U.S. or other applicable import or export requirements.
- 3.6. The Customer hereby certifies that it has not paid, or offered or agreed to pay, or has caused to be paid, or offered or agreed to be paid directly or indirectly, in respect of this Agreement any political contributions, fees or commissions (as defined in Part 130 of the ITAR), and it will not do so in connection with its work related to this Agreement.
- 3.7. Any Orders or other actions made by Customer in contravention of ITC Laws are outside the scope of authority granted to Customer under this Agreement and shall be null and void. Customer shall not ship any Products sold under this agreement in contravention of ITC Laws. Customer agrees to provide immediately to the Company any information Customer becomes aware of that would indicate Products or technical data may have been diverted to an impermissible end use or end user. Customer's obligations to comply with ITC Laws will survive any expiration or termination of this Agreement.

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<sup>1</sup> See [www.treasury.gov/resource-center/sanctions/SDN-List/Pages/consolidated.aspx](http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/consolidated.aspx) for US sanctions screening list; <http://www.international.gc.ca/sanctions/index.aspx?lang=eng> for Canadian sanctions screening list; and [http://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions\\_en](http://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions_en) for European Union sanctions screening list.

<sup>2</sup> See <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>, and Parts 742.8, 742.9, 742.10 and 746 of the EAR for a current list of restricted countries under U.S. law.