

Custom Composites Fabricator For Industry



KENWAY
composites

TERMS AND CONDITIONS OF PURCHASE

SECTION 1. DEFINITIONS – The following definitions apply: **“Bribery Legislation”** means the United Kingdom Bribery Act 2010 and any and all similar anti-bribery and/or anti-corruption legislation of any jurisdiction applicable from time to time to the Supplier, the Customer, these Conditions and the Contract and/or its subject matter (including, the U.S. Foreign Corrupt Practices Act of 1977). **“Business Day,”** means a day other than a Saturday, Sunday, or public holiday in the United States when banks are not open for business; **“Code”** means the Customer’s Code of Business Conduct as updated from time to time and which is available at www.hsholdings.co.uk; **“Commencement Date,”** has the meaning set out in Section 2 hereof; **“Compliance Regulations”** means together, the Bribery Legislation, the Code, the Customer’s Modern Slavery Policy and any other applicable Modern Slavery Policy; **“Conditions”** means these terms and conditions, as amended from time to time; **“Conflict Minerals”** means tin, tungsten, tantalum and gold and their ores sourced from the Democratic Republic of Congo or an adjoining country that directly or indirectly finance or benefit of armed groups; **“Contract”** means the contract between Customer and Supplier for the supply of Goods and/or Services in accordance with these Conditions; **“Customer,”** means KENWAY; **“Customer Materials”** has the meaning set out in Section 5(B) hereof; **“Customer’s Modern Slavery Policy”** means the Anti-slavery and Human Trafficking Policy of the Customer and/or its parent or holding company, as updated by the Customer and notified to the Supplier from time to time (a copy of which is attached); **“Deliverables”** are all documents, products, and materials developed by Supplier or its employees, agents, contractors, representatives, and all other persons employed or engaged by Supplier as part of or in relation to the Services in any form or media, including, without limitation, drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications, and reports (including drafts); **“Delivery Location”** has the meaning set out in Section 4(B) hereof; **“Goods”** are the goods (or any part of them) to be provided by Supplier under the Contract; **“Goods Specification”** is any specification for the Goods, including any related plans and drawings, that is set out in writing by Customer and delivered to Supplier, including any specifications contained in the Order; **“Intellectual Property Rights”** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; **“Order”** means Customer’s order for the supply of Goods and/or Services, as set out in Customer’s purchase order form, including these Conditions; **“Modern Slavery Laws”** means the United Kingdom Modern Slavery Act 2015 and all other applicable laws which relate to slavery, indentured workforces and human trafficking and apply from time to time to the Supplier, the Customer, these Conditions and the Contract and/or its subject matter. **“Modern Slavery Policy”** means an internal policy to ensure compliance with the Modern Slavery Laws, which shall include provision of appropriate and regular training for any Supplier Related Party. **“Services”** means the services, including, without limitation, any Deliverables, to be provided by Supplier under the Contract as set out in the Service Specification; **Service Specification;** means the description or specification for Services set out in writing by Customer and delivered to Supplier, including any description or specification for Services contained in the Order; **“Supplier”** means the person or firm from whom Customer purchases the Goods and/or Services; and **“Supplier Related Party”** is Supplier’s subsidiaries, affiliates, directors, officers, employees, agents, contractors, representatives, and all other persons employed or engaged by Supplier, including its own suppliers, in connection with the Contract or any part of it and/or any associate of such person; and **“The Code”** has the meaning set out in Section 6(B) hereof.

SECTION 2. BASIS OF CONTRACT - The Order constitutes an offer by Customer to purchase Goods and/or Services from Supplier in accordance with these Conditions. The Order shall be deemed to be accepted on the earlier of (i) Supplier issuing written acceptance of the Order or (ii) any act by Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (**“Commencement Date”**). Time is of the essence in Supplier’s performance of its obligations under the Contract. All of these Conditions shall apply to the supply of both Goods and Services, except where the application to one or the other is specified. Except as set out in these Conditions, no variation of the Contract, including the introduction of additional or different terms proposed by Supplier, whether express or implied by trade, custom, practice, or course of dealing, shall be effective unless it is agreed to in writing and signed by both parties. DIFFERENT OR ADDITIONAL TERMS PROPOSED BY SUPPLIER ON OR IN CONNECTION WITH SUPPLIER’S WRITTEN ACKNOWLEDGMENT OF CUSTOMER’S ORDER OR OTHER DOCUMENTATION SHALL NOT APPLY TO THE PURCHASE OF GOODS AND/OR SERVICES HEREUNDER AND ARE HEREBY EXPRESSLY REJECTED AND SHALL NOT BECOME PART OF THE CONTRACT. CUSTOMER’S OFFER TO PURCHASE GOODS AND/OR SERVICES FROM SUPPLIER IS EXPRESSLY LIMITED TO THESE CONDITIONS AND, IF APPLICABLE, A WRITTEN AND SIGNED AGREEMENT BETWEEN CUSTOMER AND SUPPLIER TO WHICH THESE CONDITIONS ARE ATTACHED.

SECTION 3. SUPPLY OF GOODS - Supplier warrants that the Goods shall: (i) correspond with their description and any applicable Goods Specification; (ii) be merchantable; (iii) be of satisfactory quality and fit for any purpose held out by Supplier or made known to Supplier by Customer, expressly or by implication, and in this respect Customer relies on Supplier’s skill and judgment; (iv) where applicable, be free from defects in design, materials, and workmanship and remain so for twelve (12) months after delivery; and (v) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storing, handling, and delivery of the Goods. Supplier shall ensure that at all times it has and maintains all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under the Contract. Customer shall have the right to inspect and test the Goods at any time before delivery and for a reasonable amount of time after delivery. If following such inspection or testing Customer considers that the Goods do not conform or are unlikely to comply with Supplier’s warranties or with the Goods Specification, Customer shall inform Supplier and Supplier shall immediately take such

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remedial action as is necessary to ensure compliance. Notwithstanding any such inspection or testing, Supplier shall remain fully responsible for the Goods and any such inspection or testing by Customer shall not reduce or otherwise affect Supplier's obligations under the Contract and Customer shall have the right to conduct further inspections and tests after Supplier has carried out its remedial actions.

SECTION 4. DELIVERY OF GOODS - Supplier shall ensure that: (i) the Goods are properly packaged and secured in such manner as to enable them to reach their destination in good condition and (ii) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any), and, if the Goods are being delivered by installments, the outstanding balance of Goods remaining to be delivered. If Supplier requires Customer to return any packaging material for the Goods to Supplier, that fact shall be clearly stated on the delivery note. Any such packaging material shall only be returned to Supplier at Supplier's sole cost. Supplier shall deliver the Goods: (i) on the date specified in the Order or, if no such date is specified, then within three (3) days of the date of the Order; (ii) to Customer's premises at the address set out in the Order or as instructed by Customer before delivery ("**Delivery Location**"); and (iii) during Customer's normal hours of business on a Business Day, or as instructed by Customer. Delivery of the Goods shall be deemed complete on the unloading of all the Goods at the Delivery Location. If Supplier delivers less than ninety percent (90%) of the quantity of Goods ordered, or delivers more than one hundred percent (100%) of the quantity of Goods ordered, Customer may, at its sole discretion, reject the entire amount of Goods delivered or the excess Goods. Customer will hold such rejected Goods at Supplier's risk and expense, including storage charges, while awaiting Supplier's return shipping instructions. Supplier shall bear all return shipping charges, including, without limitation, insurance charges that Customer incurs on Supplier's behalf. Customer may, in its sole discretion, destroy or sell at a public or private sale any rejected Goods for which Customer does not receive return shipping instructions from Supplier within a reasonable time, and apply the proceeds, if any, first toward any storage charges. If Supplier delivers more or less than the quantity of Goods ordered, and Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods. Supplier shall not deliver the Goods in installments without Customer's prior written consent. Where it is agreed in writing that the Goods are to be delivered by installments, the Goods may be invoiced and paid for separately. However, failure by Supplier to deliver any one installment on time or at all or any defect in an installment shall entitle Customer to the remedies below. Title to and risk in the Goods shall pass to Customer on completion of delivery at the Delivery Location.

SECTION 5. SUPPLY OF SERVICES - If the Contract is for or includes Services to be performed by Supplier then shall from the Commencement Date and for the duration of the Contract provide the Services to Customer in strict accordance with the terms of the Contract. Supplier shall meet any performance dates for the Services specified in the Order or provided to Supplier by Customer. In providing the Services, Supplier shall: (i) co-operate with Customer in all matters relating to the Services, and comply with all instructions of Customer; (ii) perform the Services with the best care, skill, and diligence in accordance with best practice in Supplier's industry, profession, or trade; (iii) use personnel who are suitably skilled, trained, and experienced to perform the tasks assigned to them and in sufficient number to ensure that Supplier's obligations are fulfilled in strict accordance with the Contract; (iv) ensure that the Services and Deliverables will strictly conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to Supplier by Customer; (v) provide all equipment, tools, and vehicles and such other items as are required to provide the Services; (vi) use the best quality goods, materials, standards, procedures, and techniques; (vii) ensure that the Deliverables, and all goods and materials supplied and used in connection with the Services or transferred to Customer, are free from defects in workmanship, materials, installation, and design; (viii) obtain and at all times maintain all necessary licenses and consents, and comply with all applicable laws and regulations; (ix) observe all health and safety rules and regulations and any other security requirements that apply at any of Customer's premises; (x) hold all materials, equipment and tools, and information, knowledge, and data (including, without limitation, financial, business, and product strategy information; product specifications; product designs; procedures; drawings; studies; tests; and reports) supplied by Customer to Supplier ("**Customer Materials**") in safe custody at its own risk, maintain Customer Materials in good condition until returned to Customer, and not dispose or use Customer Materials other than in accordance with Customer's written instructions or authorization; and (xi) not do or omit to do anything which may cause Customer to lose any license, authority, consent, or permission upon which it relies for the purposes of conducting its business.

SECTION 6. COMPLIANCE – (6.1) In the performance of all of its obligations under these Conditions and the Contract Supplier shall comply with this Section 6 at all times. (6.2) Each party agrees to comply fully, at its own expense, with all applicable laws and regulations of the United States, the Compliance Regulations and any other applicable local law or regulation, including, without limitation, all import and export laws, restrictions, national security controls, anti-slavery and human trafficking legislation and anti-corruption legislation. (6.3) Supplier represents, warrants and undertakes to Customer that: (6.3a) in relation to these Conditions and the Contract and/or its subject matter or otherwise, neither Supplier nor any of its employees, sub-contractors or agents or others performing services on behalf of Supplier has done (or agreed to do) or will do (or agree to do) anything which constitutes a breach by Supplier or Customer of the Compliance Regulations; (6.3b) Supplier has in place, and will at all times during the term of the Contract continue to have in place if required by law applicable to Supplier, a Modern Slavery Policy and adequate procedures designed to prevent any person associated with Supplier from committing an MSA Offense under the Compliance Regulations and will, at all times during the term of the Contract comply, with the most recent guidance issued from time to time by any applicable government department or regulatory body in relation to the Compliance Regulations; (6.3c) Supplier is not aware of any circumstances within its supply chain or involving any Supplier Related Party that could give rise to an investigation relating to an alleged breach of, or prosecution under, the Compliance Regulations; (6.3d) Supplier will not use, and will ensure that its supply chain does not use, any Conflict Minerals in its manufacturing or contract manufacturing activities or in the provision of the Goods or Services; (6.3e) Supplier shall comply with the Compliance Regulations in connection with the Contract or its relationship with Customer or any companies within the Hill & Smith Holdings plc group of companies (including Customer), and Customer's business and shall immediately notify Customer if it discovers or suspects that any of its officers, directors, employees or representatives are acting or have acted in a way which violates such Compliance Regulations and take such remedial action as Customer shall reasonably direct; (6.3f) Supplier shall maintain such records relating to any

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Contract and/or in relation to these Conditions as to enable Customer to determine Supplier's compliance with the Compliance Regulations in accordance with Section 6.6; (6.3g) If requested by Customer, Supplier will sign an Anti-Corruption Certification substantially in the format set out in Schedule 1, as amended from time to time by Customer, at least once in every 12 month period of the Contract; (6.3h) Supplier will promptly co-operate (and will procure that each of its employees, agents, sub-contractors and any others performing services on its behalf in relation to the contract and/or its subject matter will co-operate) with Customer and/or any regulator and/or prosecutor in any investigation relating to any breach, or alleged breach, of any Compliance Regulation by Supplier or any of its employees, agents, sub-contractors or others performing services on its behalf; and (6.3i) neither Supplier nor any of its subsidiaries or affiliates nor, to the best of its knowledge, any of its or their directors, officers, shareholders, agents or employees has been subject to any investigation by any government agency with regard to any breach of the Compliance Regulations. (6.4) Supplier will throughout the term of the Contract comply with, monitor, and enforce the obligations referred to in this Section 6. (6.5) Without prejudice to Section 18, Supplier shall ensure that any contract it enters into with a Supplier Related Party contains substantially the same provisions as those provisions in these Conditions, including an obligation to comply with any applicable Modern Slavery Laws and any applicable Modern Slavery Policy, and an ability for Supplier to audit any Supplier Related Party to ensure compliance with any applicable Modern Slavery Policy, Customer's Modern Slavery Policy and any applicable Modern Slavery Laws. (6.6) Supplier shall, if requested by Customer, carry out an annual audit to monitor its compliance with the Compliance Regulations and provide a copy of the audit report to Customer which shall include details of the steps taken by Supplier to ensure compliance with the Compliance Regulations. Supplier shall also provide a copy of its latest annual transparency statement (as required by section 54 of the United Kingdom Modern Slavery Act 2015) to Customer promptly after it is published. (6.7) Supplier agrees that it must be able to demonstrate its compliance with the requirements referred to in this Section 6 at the request of and to the satisfaction of Customer which includes, but is not limited to, Customer having the right to inspect (at Customer's cost and upon reasonable notice) any site, records and files of Supplier relating to the Contract (or any other business transaction with Customer or any member of the Hill & Smith Holdings PLC group of companies). (6.8) Supplier shall, at its own cost, perform any appropriate remediation actions required by Customer or any regulator to address any issues or failures whether identified by an audit carried out pursuant to Sections 6.6 or 6.7 or otherwise, and within such timescales as are agreed with Customer. (6.9) If Supplier fails to comply with this Section 6, Customer shall be entitled, in its sole discretion, to terminate the Contract and any other contracts between Supplier and Customer without penalty to Customer but with obligations for Supplier to remedy any damages suffered by Customer as a result of such termination or breach of Contract. Any termination pursuant to this Section 6.9 will be without prejudice to any right and/or remedy, that has already accrued, or may subsequently accrue, to Customer. (6.10) Supplier shall be responsible for obtaining any necessary import and export licenses or permits necessary for the performance of its obligations under the Contract and Supplier shall be responsible for any and all customs, duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation, exportation and delivery of the Goods and Services and any associated technology. (6.11) Supplier in addition, hereby confirms to Customer, that it does not, in the course of its general business activities (regardless of any prior export license, license exception or general license), supply Goods or Services and their associated technologies directly or indirectly to any person, entity or into any territory which is embargoed, prohibited, debarred or otherwise the subject of sanctions from the United Kingdom, the European Union, the United States of America or the territory in which Supplier is located. (6.12) In addition to all other remedies available to Customer, Supplier shall indemnify Customer against all liabilities, costs, expenses, damages and losses (including any indirect, special or consequential losses or damages, and any direct or indirect loss of profit, loss of revenue, loss of business, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Customer arising out of or in connection with Customer's breach of any of the provisions of this Section 6. (6.13) For the avoidance of doubt, this Section 6 shall survive termination or expiration of the Contract.

SECTION 7. CUSTOMER REMEDIES - If Supplier fails to deliver the Goods and/or perform the Services by the applicable date, Customer shall, without limiting its other rights or remedies, have one or more of the following rights: (i) to terminate the Contract with immediate effect by giving written notice to Supplier; (ii) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods that Supplier attempts to make; (iii) to recover from Supplier any costs incurred by Customer in obtaining substitute goods and/or services from a third party; (iv) where Customer has paid in advance for Services that have not been provided by Supplier and/or Goods which have not been delivered by Supplier, to have such sums refunded by Supplier within thirty (30) days of its failure to provide the Services or deliver the Goods; and (v) to claim damages for any additional costs, loss, or expenses incurred by Customer that are in any way attributable to Supplier's failure to meet such dates. If the Goods are not delivered by the applicable date, Customer may, at its option and in lieu of the foregoing contractual remedies, claim or deduct five per cent (5%) of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of twenty per cent (20%) of the total price of the Goods. If Customer exercises such option, it shall not be entitled to any of the remedies in respect of the Goods' late delivery. If Supplier has delivered Goods that do not strictly comply with Section 3(A) hereof and the Contract, then, without limiting its other rights or remedies, Customer shall have one or more of the following rights, whether or not it has accepted the Goods: (i) to reject the Goods (in whole or in part) whether or not title has passed to Customer and to return the Goods to Supplier at Supplier's own risk and expense; (ii) to terminate the Contract with immediate effect by giving written notice to Supplier; (iii) to require Supplier to repair or replace the rejected Goods to Customer's satisfaction, or (iv) to provide a full refund of the price of the rejected Goods (if paid); (v) to require the Supplier at its sole cost to re-execute the Services in accordance with the Contract, or to provide a full refund of the price of the rejected Services; (vi) to refuse to accept any subsequent delivery of the Goods which Supplier attempts to make; (vii) to refuse to make payment of the price of the Goods or Services; (viii) to recover from Supplier any expenditure incurred by Customer in obtaining substitute goods and/or services from a third party; (ix) and to claim damages for any additional costs, loss, or expenses incurred by Customer arising from Supplier's failure to supply Goods in accordance with these Conditions. These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by Supplier. Customer's payment to Supplier for Goods prior to Customer's timely rejection of such Goods as non-conforming will not be deemed as acceptance by Customer. Customer's rights under the Contract are in addition to its rights and remedies which may be implied by any applicable law.

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SECTION 8. CUSTOMER'S OBLIGATIONS - Customer shall: (A) provide Supplier with reasonable access at reasonable times to Customer's premises for the purpose of providing the Services and (B) provide such information as Supplier may reasonably request for the provision of the Services and Customer considers reasonably necessary for the purpose of providing the Services.

SECTION 9. CHARGES AND PAYMENT - The price for the Goods shall be: (i) the price set out in the Order, or if no price is quoted, the price set out in Supplier's published price list in force as of the Commencement Date and (ii) inclusive of the costs of packaging, insurance, shipping, delivery, loading and unloading of the Goods and all duties, customs, tariffs, imposts, and government-imposed surcharges, unless otherwise agreed in writing by Customer. No extra charges shall be effective unless agreed to in writing and signed by Customer. The charges for the Services shall be the charges set out in the Order, and shall be the full and exclusive remuneration of Supplier in respect of the performance of the Services. Unless otherwise agreed to in writing by Customer, the charges for the Services shall include every cost and expense of Supplier directly or indirectly incurred in connection with the performance of the Services. In respect of Goods, Supplier shall invoice Customer on or at any time after completion of delivery. In respect of Services, Supplier shall invoice Customer on completion of the Services. Each invoice shall include: (i) such supporting information required by Customer to verify the accuracy of the invoice, including, but not limited, to the relevant purchase order number and (ii) if, required in the Order, Supplier's certification of conformance with the Goods Specification and/or Service Specification. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services. In consideration of the supply of Goods and/or Services by Supplier, Customer shall pay the invoiced amounts within thirty (30) days of the end of the month in which a correctly rendered invoice is provided by Supplier to Customer, unless Customer has agreed to other payment terms in writing. In no event shall Customer be obligated to pay late fees or penalties. Supplier shall maintain complete and accurate records of the time spent and materials used by Supplier in providing the Services, and Supplier shall allow Customer to inspect such records at all reasonable times on request. Customer may at any time, without limiting any of its other rights or remedies, set off any liability of Supplier to Customer against any liability of Customer to Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

SECTION 10. INTELLECTUAL PROPERTY - All Customer Materials are the exclusive property of Customer. Each party retains its existing rights in background Intellectual Property Rights. Customer grants to Supplier a non-exclusive, worldwide, royalty free, revocable license to use its background Intellectual Property Rights, and any Customer Materials, solely for the period of the Contract for the purposes of the Contract. Any foreground Intellectual Property Rights generated by Supplier in the performance of its obligations hereunder shall vest in Customer, and Supplier shall have no interest, right, or title in the same. In respect of the Goods and any goods that are transferred to Customer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, Supplier warrants that it has good and unencumbered title to all such items, and that at the date of delivery of such items to Customer, it will have full and unrestricted rights to sell and transfer all such items to Customer. Supplier irrevocably assigns and transfers to Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights to the products of the Services, including for the avoidance of doubt the Deliverables. Supplier shall obtain waivers of all moral rights to the products of the Services, including for the avoidance of doubt the Deliverables, to which any individual is now or may be at any future time entitled. Supplier shall, promptly at Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Customer may from time to time and at any time require for the purpose of securing for Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Customer as described in this these Conditions. All Intellectual Property Rights created by or on behalf of Supplier and allocated to Customer shall constitute works made for hire, including, but not limited to under the United States Copyright Act, and shall be the property of Customer who shall be entitled to use and license others to use such works, subject to the provisions of the Contract and unencumbered by moral rights. To the extent any such Intellectual Property Right is not or is not deemed to be a work made for hire or rights in such work do not automatically accrue to Customer, Supplier irrevocably assigns and agrees to assign to Customer, its successors and assigns, the entire right, title, and interest in perpetuity throughout the world in and to such Intellectual Property Right and rights in such work. Where applicable and relevant to perfecting in Customer Intellectual Property Rights and other rights specifically allocated to Customer in the Contract, and where such rights arise in or through Supplier, Supplier agrees to obtain when requested and without additional charge by Supplier and at Customer's expense, any other assignments of rights in such Intellectual Property Rights from the inventor, author, or other third parties in favor of Customer, its successors and assigns.

SECTION 11. INDEMNITY - Supplier shall defend, indemnify and hold harmless Customer, its subsidiaries, affiliates, directors, officers, employees, agents, contractors, representatives, and/or any other person associated with or acting on their behalf (collectively, "**Indemnitees**"), from and against all claims, demands, actions, causes of action, losses, liabilities, damages, penalties, costs, and expenses, including reasonable attorneys' fees and costs ("**Claims**"), suffered or incurred by any of the Indemnitees based upon or arising out of (i) any breach or violation by Supplier of any of its representations, warranties, covenants, or agreements set forth in these Conditions or the Contract; or (b) the negligence or misconduct of Supplier. Such indemnification obligation shall continue for as long as the statute of limitations applicable to any such Claims remains in effect. Supplier shall be given the opportunity to assume the defense of such Claims. If Supplier fails to assume such defense, Customer may defend the action in the manner it deems appropriate, and Supplier shall pay to Customer all costs, including reasonable attorneys' fees, incurred by Customer in effecting such defense and any subsequent legal appeal, in addition to any sum which Customer may pay by reason of any settlement or judgment against Customer.

SECTION 12. INSURANCE - During the term of the Contract and for a period of six (6) years thereafter, Supplier shall maintain in force, with a reputable insurance company, comprehensive liability insurance, including product liability coverage, in amount which is the higher of: (i) the

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insurance amount(s) specified in the Contract or (ii) One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate, One Million Dollars (\$1,000,000) per occurrence for damage and/or injury to property, and Worker's Compensation Insurance as required by law. Such coverage shall be on a date of occurrence form. Supplier shall, from time to time and at Customer's request, provide Customer with certificates of insurance evidencing the above stated coverages.

SECTION 13. LIABILITY – To the fullest extent permitted by law, under no circumstances will Customer be liable to Supplier for an amount in excess of the price actually paid for the Goods and/or Services under the Contract for any claims, losses, liens, costs, liabilities, causes of action, suits, demands, judgments, obligations, fines, penalties, damages, requirements, violations, and expenses (including without limitation, attorneys' fees, court costs, and costs of investigation) of any nature, kind, or description, whether based in contract, warranty, indemnity, or tort (including negligence and strict liability), of any person or entity, directly or indirectly, arising out of, resulting from or related to the Contract or the Goods and/or Services.

SECTION 14. CONFIDENTIALITY - A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, initiatives, and intellectual property that are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, contractors, agents, and representatives, and any other confidential information concerning the disclosing party's business, its products, and services that the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, contractors, agents, and representatives who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, contractors, agents, and representatives comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority, or by a court of competent jurisdiction.

SECTION 15. TERMINATION - Without limiting its other rights or remedies, Customer may terminate the Contract: (i) in respect of the supply of Services, by giving Supplier one (1) months' written notice; and (ii) in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to Supplier, whereupon Supplier shall discontinue all work under the Contract. Customer shall pay Supplier fair and reasonable compensation for any work in progress to the extent that the same cannot be redeployed or otherwise mitigated in respect of the Goods at the time of termination, but such compensation shall not include loss of profits or any consequential loss or indirect loss or damage whatsoever. Without limiting its other rights or remedies, Supplier may terminate the Contract by giving Customer three (3) months' written notice. In those circumstances where both Goods and Services are to be supplied under the Contract, and a party to the Contract has the right to terminate the Contract, that party may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remainder. Without limiting its other rights or remedies, Customer may terminate the Contract with immediate effect by giving written notice to Supplier if Supplier: (i) commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of receipt of notice in writing to do so; (ii) commits an MSA Offense; (iii) becomes insolvent, or a bankruptcy petition is filed by or against it, or enters into any type of proceeding under and pursuant to the insolvency or receivership laws of the United States or any state or other jurisdiction; (iv) makes a general assignment for the benefit of creditors; (v) fails to pay any one or more of its components suppliers on a timely basis consistent with contractual obligations and industry standards; or (vi) is the subject of any acquisition, merger, business combination, consolidation or any other change of ownership directly or indirectly. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued prior to and as of termination.

SECTION 16. CONSEQUENCES OF TERMINATION - On termination of the Contract for any reason, Supplier shall immediately (but no later than three (3) Business Days), upon direction by Customer, deliver to Customer all Deliverables whether or not then complete, and return all Customer Materials to Customer to the extent that the same are not stored in backup IT systems where Supplier shall not be required to have to retrieve the same. Where Supplier fails to deliver all Deliverables and return all Customer Materials to Customer, Customer may enter Supplier's premises and take possession of them. Until they have been returned or delivered, Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract. If Supplier fails to immediately return all Customer Materials, Supplier shall indemnify Customer for all liabilities, costs, expenses, damages, and losses (including but not limited to any direct, indirect, or consequential losses, loss of profit, loss of reputation, and all interest, penalties, and legal costs and expenses and all other reasonable professional costs and expenses) suffered incurred by Customer as a result of or in connection with Suppliers' failure to immediately return the Customer Material.

SECTION 17. FORCE MAJEURE - Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from events, circumstances, or causes beyond its reasonable control, including, but not limited to: (i) Acts of God, flood, drought, earthquake, the collapse of buildings, fire or explosion or other natural disaster; (ii) terrorist attack, civil war, civil commotion, riots, war, threat of or preparation for war, or armed conflict; (iii) imposition of sanctions, embargo, or breaking off of diplomatic relations; (iii) nuclear, chemical, or biological contamination or sonic boom, epidemic, or pandemic; and (iv) any law or any action taken by a Government or a public authority, including, without limitation, imposing an export or import restriction, quota, or prohibition (each a "Force Majeure Event"). Supplier shall use all reasonable endeavors to mitigate the effect of a Force Majeure Event on the performance of its obligations. If a Force Majeure Event prevents, hinders, or delays Supplier's performance of its obligations for a continuous period of more than thirty (30) days, Customer may terminate the Contract immediately by giving written notice to Supplier.

SECTION 18. ASSIGNMENT AND OTHER DEALINGS - Customer may at any time assign, transfer, mortgage, charge, subcontract, or deal in any other manner with all or any of its rights or obligations under the Contract. Supplier shall not assign, transfer, mortgage, charge or subcontract

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with all or any of its rights or obligations under the Contract without the prior written consent of Customer, which consent may be withheld for any reason. If Customer consents to Supplier's use of a subcontractor, Supplier will (i) guarantee and will remain primarily liable for the performance of all subcontracted obligations and (ii) indemnify Customer for 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 Customer arising out of or in connection with Supplier's subcontractor's failure to perform in strict accordance with the Contract.

SECTION 19. NOTICES - Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the principal place of business of Supplier or Customer (or such other address as Supplier or Customer may designate); if sent by pre-paid first class post, at 9.00 a.m. on the third Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed. The provisions of this Clause shall not apply to the service of any proceedings or other documents served in any legal action.

SECTION 20. SEVERANCE - If any provision or part-provision of the Contract is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal, and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Section 19 shall not affect the validity and enforceability of the rest of the Contract.

SECTION 21. WAIVER - A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

SECTION 22. NO PARTNERSHIP OR AGENCY - Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

SECTION 23. NO RELATIONSHIP OF EMPLOYER AND EMPLOYEE - Nothing in the Contract is intended to, or shall be deemed to, establish any relationship of employer and employee between the parties.

SECTION 24. THIRD PARTIES - Any person who is not a party to the Contract shall not have any rights to enforce its terms.

SECTION 25. GOVERNING LAW AND JURISDICTION - This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the state/province where Customer has its principal place of business, without regard to such state's/province's conflict of law rules. The Parties irrevocably agree that the courts of Customer's principal place of business shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions or the Contract or its subject matter or formation (including non-contractual disputes or claims).

SECTION 26. SURVIVAL - Except as otherwise set forth expressly herein, the covenants, obligations, representations, and warranties of Supplier under these Conditions and the Contract shall survive the expiration or termination of the Contract for any reason.