

## **Excalibre Technologies Limited**

# **TERMS AND CONDITIONS OF SALE (TfGM specific Buyers)**

### **Background**

- A. The Seller is an official supplier to Transport for Greater Manchester (**TfGM**) under a Retrofit Financial Support Scheme by which TfGM will administer grants to Eligible Applicants with financial support to upgrade their existing vehicles that do not meet the Greater Manchester Clean Air Zone Scheme (**GMCAZ**) requirements.
- B. The Buyer wishes to contract with the Seller to carry out upgrade work to its vehicles as part of the Buyer's requirements to conform to GMCAZ (the **Scheme**)

### **1 Interpretation**

1.1 In these Conditions:

1.1.1 Any reference in these Conditions to any provision of the statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

"Contract" means the contract for the purchase and sale of the Goods.

"Goods" means the goods set out in the Order.

"Services" means any installation services, servicing or other services agreed to be supplied by the Seller as may be set out in the Service Specification.

"Service Specification" means the details of the services agreed to be supplied by the Seller, which shall be attached to or included in the Order.

"Order" means Buyer's order form or the Buyer's written acceptance of the Seller's quotation, subject to the conditions of clause 3.

"Writing" includes e-mail, facsimile transmission and comparable means of communication

### **2 Basis of the sale**

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with either any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions. These Conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any such

quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller
- 2.3 Any advice or recommendation given by the Seller is only valid if confirmed in the operator's manual for the relevant Goods.
- 2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.5 These conditions shall apply to all contracts for the sale of all products or other Goods and services by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.6 All orders for products or other Goods and services shall be deemed to be an offer by the Buyer to purchase pursuant to these conditions.
- 2.7 Acceptance of delivery of the products or other Goods and services shall be deemed conclusive evidence of the Buyer's acceptance of these conditions.
- 2.8 All payment terms are subject to the Seller's approval of the Buyer's credit worthiness. Where the Seller is to extend credit such credit is at the Seller's absolute discretion. In the event that the Seller's withholds credit then payment shall be due in full prior to delivery of the Goods.

### **3 Orders and Specifications**

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by the Seller's authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring that the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms
- 3.3 The Buyer shall be solely responsible for any pre-existing damage or degradation to any Diesel Particulate Filter (**DPF**), Catalytic convertor or other product submitted by the Buyer for cleaning and the Supplier shall have no liability in respect of any such damage or degradation.
- 3.4 The quantity, quality and description of any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller)
- 3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all associated loss, damages, costs and expenses
- 3.6 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with their performance or any applicable statutory or regulatory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance

- 3.7 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

#### **4 Price of the Goods**

- 4.1 The price of the Goods shall be the Price.
- 4.2 In the absence of a written quotation the price for the Goods shall be the Seller's list price less any discounts or credits agreed. All prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.3 The Seller may increase the price of the Goods upon notice to the Buyer to reflect any additional increases in the Seller's cost of supplying the Goods.
- 4.4 The price is exclusive of any applicable value added tax, excise, customs, import or other tax or other governmental imposition whatsoever (including the costs of any testing) which the Buyer shall be additionally liable to pay to the Seller.
- 4.5 Provided that items requiring return to the Seller (e.g. packaging) are delivered to the Seller within 60 days of delivery no charge shall be made for those items. In event of default the cost of replacement of such items shall be charged to the Buyer.

#### **5 Terms of Payment**

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Seller may require the Buyer to pay for Goods before despatch. The Buyer shall otherwise pay the price of the Goods on the within 30 days. The time of payment of the price shall be of the essence of the Contract.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
- 5.3.2 allocate or apportion any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
- 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum or such other rate as may prevail from time to time, pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 until payment in full is made or if higher to pay for Goods at the interest rate which the manufacturer charges the Seller; and
- 5.3.4 repossess any goods which have not been paid for in full.

## **6. Delivery**

- 6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer's place of business or such other place as shall be agreed with the Buyer.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 In the event that delivery is delayed by the Buyer, the Seller may immediately invoice for the Goods and the Buyer shall in addition pay the cost of the failed delivery.

## **7. Risk and Retention of Title**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's.
- 7.4 Until such time as the title in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **8. Supply of Services**

- 8.1 The Seller shall supply the Services to the Buyer in accordance with any specification set out in the Service Specification in all material respects.
- 8.2 The Seller shall use all reasonable endeavours to meet any performance dates for the Services as may be specified in the Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

- 8.3 The Seller reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature of the quality of the services, and the Seller shall notify the Buyer in any event.
- 8.4 Some vehicles may require modification to the Goods and/or the vehicle to enable installation Services to take place. In the event that these are required the Seller will consult with the Buyer and seek to agree such required modifications in advance.
- 8.5 If a vehicle requires modification in accordance with clause 8.4 above, the Seller shall not be liable in respect any loss or damage to the vehicle which may be caused as a result of any modifications and the Buyer must satisfy themselves on the risks of any modifications required to a vehicle and seek expert advice on the same if required.
- 8.6 If a vehicle requires modification in accordance with clause 8.4 above, and existing vehicle parts need to be removed (such as clamps or mounting straps for example), and those parts become damaged or are unfit to be reused, then the Buyer must provide suitable replacement parts at its' expense.
- 8.7 Where possible the Seller shall install the Goods so that the exhaust pipework follows existing routes. Where this is not possible the exhaust will be re-routed in accordance with good industry practice and the manufacturer's installation guidelines.

## 9. **Buyer's obligations**

- 9.1 The Buyer shall:
- (a) Ensure that the terms of the Order and any information it provides in the Service Specification are complete and accurate;
  - (b) co-operate with the Seller in all matters relating to the Services
  - (c) agree an installation site with the Seller in respect of any installation Services, and where it is the Buyer's nominated premises the Buyer must prepare the site for installation, as well as provide all facilities that are required including vehicle lifts, and other facilities which are reasonably required by the Seller to provide the Services;
  - (d) provide the Seller with such information as the Seller may reasonably require in order to supply the Services and ensure that such information is complete and accurate in all material respects;
  - (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date the Services start;
  - (f) comply with all applicable laws, including health and safety laws;
  - (g) keep all materials, equipment, documents and other property of the Seller (Seller Materials) at the Buyer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller; and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions and authorisation; and
  - (h) comply with any additional obligations as set out in the Service Specification.

- 9.2 Prior to the Seller carrying out any required installation Services the Buyer shall undertake a pre-assessment of the vehicle which is to receive the installation Services. The pre-assessment must include an engine out smoke test, a performance test of the AdBlue system and a check to ensure the AdBlue lines are clear. If the vehicle is not presented as suitable for the Services to be carried out then the Buyer agrees that the Seller may:
- (a) charge for additional remedial work and components which may be required to allow the Services to be performed;
  - (b) postpone the installation until the Buyer has rectified the vehicle;
  - (c) with written agreement from the Buyer, continue to provide the installation Services on the agreement by the Buyer to rectify the faults within an agreed period of time and on the agreement that warranties provided under these terms in respect of the installed Goods and Services will not commence until the date that all faults have been rectified and satisfactory written evidence is provided to the Seller by the Buyer to confirm the same.
- 9.3 The Buyer shall ensure that the installation Services will comply with MOT standards (for example, the exhaust outlet is moved).
- 9.4 The Buyer shall ensure the vehicle is presented for installation and it has complied with its obligations as set out herein, on the agreed date of installation. In the event that the Buyer fails to present the vehicle for installation on the date agreed with the Seller, then the Buyer must indemnify the Seller for its' losses incurred in respect of the failure to present, to include direct and indirect loss and loss of anticipated profit. **TfGM Grant funded Sales**

**The following additional terms shall apply to grant funded work**

- 9.5 Where the Buyer is entitled to receive grant funding the Buyer:
- a) warrants to the Seller that it has submitted and is entitled to a Retrofit Grant from TfGM pursuant to the Scheme; and
  - b) shall fully comply with TfGM's grant requirements and terms pursuant to the Scheme; and
  - c) will be required to pay the difference between the quoted price and the grant award at the time of order such payment shall constitute the deposit for the order and shall be non-refundable ; and
  - d) acknowledges that VAT is payable on the full amount due (including for the avoidance of doubt the grant funded element);and
  - e) further acknowledges that the quotation submitted by the Seller is subject to TfGM checks and issue of a FAN approval number

**Deposits for other Grant Funded and Direct Sales**

- 9.6 For other grant funded sales then a non-refundable deposit of 50% will be required at time of order and the balance prior to installation.9.7A non-refundable 50% deposit payment shall be payable on all non-grant funded purchases which is payable at time of order and the balance paid prior to installation In the event of cancellation, Buyer is liable for all costs incurred to the point of cancellation.

## General

9.8 The Buyer acknowledges that Telematics are not required by TfGM but is an integral part of the Proventia system and a condition of warranty. Data may be made available to TfGM or other government bodies if requested and the Buyer is deemed to consent to such disclosure if the Seller shall be required to provide the same.

## 10. Warranties and liability

- 10.1 Subject to the terms set out below and within these Conditions the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship.
- 10.2 The Seller provides limited customer warranties which are those warranties as shall be supplied by the manufacturer of the Goods. The Buyer is obliged to comply with the manufacturer's requirements which vary by manufacturer including registration requirements. The Seller will provide a copy of the relevant warranty and the Buyer shall satisfy itself as to the warranty terms.
- 10.3 The above warranty is given by the Seller subject to the following conditions:
- 10.3.1 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's or manufacturer's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
- 10.3.2 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) or to deliver a copy of the CVRAS approval certificates if the total price for the Goods and Services has not been paid by the due date for payment;
- 10.3.3 the above warranties do not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the relevant manufacturer to the Seller;
- 10.3.4 the above warranties shall not apply in respect of any variations of the Goods which have been agreed between the parties to enable installation services to take place in accordance with clause 8 above.
- 10.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 10.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the

Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

- 10.6 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods or Services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
  - 10.6.1 Act of God, explosion, flood, tempest, fire or accident;
  - 10.6.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 10.6.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 10.6.4 import or export regulations or embargoes;
  - 10.6.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
  - 10.6.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery.
  - 10.6.7 power failure or breakdown in machinery.
- 10.7 The Buyer warrants that the Goods and the use of them will:
  - 10.7.1 comply with all laws governmental regulation or orders affecting the operation, use, removal or return of the Goods in the jurisdiction where the Goods are used or sold to by the Buyer.
  - 10.7.2 will be used in accordance with the applicable operators instruction manual  
and the Buyer will indemnify the Seller in respect of any losses which the Seller may suffer as a result of any breach of this warranty.
- 10.8 Subject to any exclusions or provisions in the Service Specification, these terms, and the Buyer complying with its obligations under clause 9, the Seller warrants that the Services will be provided using reasonable care and skill.
- 10.9 The Seller does not provide any breakdown and repair cover to the Buyer where Services have been provided.
- 10.10 If installation Services have been provided by the Seller, and Goods which have been installed by the Seller require repair, or installation Services to be re-performed, then the vehicle must be returned to the original place of installation. If repairs or services are required which are not covered by a manufacturers' warranty or a warranty given by the Seller under these terms then a purchase order must be issued prior to repair works being undertaken by the Seller.
- 10.11 Time shall not be of the essence in respect of any repair or remedial works required to be undertaken by the Seller in respect of the Goods and Services.

## **11 Indemnity**

The Buyer shall indemnify and hold the Seller harmless against:

- 11.1 all claims, demands, suits, actions or other proceedings including but not limited to the injury or death to any person loss or damage to any property arising out of or in any way connection with or caused by the installation, operation, use, repair, removal or return of the Equipment or any part thereof whether such loss or injury shall be to persons employed by the Buyer or to third parties (including but not limited to any penalties for fines, costs, charges or expenses assessed by any governmental authority for violations of any statutes, laws, rules or regulations including any and all environmental laws); and
- 11.2 in the event of the Seller needing to take proceedings to recover monies or possession of Goods to enforce its rights under this Agreement, the Buyer shall be liable to the Seller for all costs and expenses including the Sellers solicitors fees on an indemnity basis.
- 11.3 any failure on the part of the Buyer to comply with its obligations under the Scheme and/or clauses 9.5 a),9.5b) and 9.5 e) of these terms.

## **12 Insolvency of Buyer**

- 12.1 This clause applies if:
  - 12.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - 12.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
  - 12.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
  - 12.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 12.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrange

## **13 Export terms**

In addition to the existing terms and conditions the following terms shall apply where the Goods are to be exported from the United Kingdom.

- 13.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in the Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 13.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

- 13.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 13.4 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered F.O.B. the air or sea port of shipment and the Seller shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
- 13.5 The Seller shall have no liability for any claim in respect of any damage during transit where such transit has been arranged by the Buyer.
- 13.6 The Buyer undertakes not to offer the Goods for resale in or any other country other than one to which it has been delivered without the consent of the Seller in writing such consent not to be unreasonably withheld or delayed.

#### **14 Limitation of liability**

- 14.1 **Background to the limits and exclusions on the Seller's liability** The Seller has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £15,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Seller has been able to arrange and the Buyer is responsible for making its own arrangements for the insurance of any excess loss.
- 14.2 **Liability under indemnities.** Nothing in the agreement shall limit any liability under clause 11 of these terms.
- 14.3 **Liabilities which cannot legally be limited.** Nothing in the agreement limits any liability which cannot legally be limited, including liability for:
- death or personal injury caused by negligence;
  - fraud or fraudulent misrepresentation; and
  - breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.4 **Cap on the Seller's liability.** Subject to clause 14.2 and clause 14.3 the Seller's total liability to the Buyer shall not exceed the following:
- 14.4.1 In respect of the Goods sold the value of the manufacturer warranties provided
  - 14.4.2 In respect of any other breach of contract any claim shall be limited to the value of the Goods and Services purchased
  - 14.4.3 In respect of any claim relating to the cleaning of a DPF the Seller's liability shall be limited to the cost of the contract price for the clean.
  - 14.4.4 In respect of any other claim including product liability claims the amount of the insurance cover reasonably carried by the Seller in respect of such liability from time to time. Pursuant to clause 14.1 the Seller's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the agreement.
- 14.5 **The following losses are specifically excluded as liabilities of the Seller:**
- Loss of profits.

Loss of sales or business.

Loss of agreements or contracts.

Loss of anticipated savings.

Loss of use or corruption of software, data or information.

Loss of or damage to goodwill.

Indirect or consequential loss.

**14.6 Exclusion of statutory implied terms.** The Seller has given commitments as to compliance of the Goods and Services with relevant specifications in clauses 8 and 9. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

**14.7 No liability for claims not notified within 6 months.** Unless the Buyer notifies the Seller that it intends to make a claim in respect of an event within the notice period, the Seller shall have no liability for that event. The notice period for an event shall start on the day on which the Buyer wishing to make a claim became, or ought reasonably to have become, aware of the event having occurred and shall expire 6 months from that date. The notice must be in Writing and must identify the event and the grounds for the claim in reasonable detail. This clause shall not affect the Buyer's ability to claim pursuant to a manufacturer's warranty in clause 9.

## **15. Insurance**

The Buyer represents that it has or shall procure and maintain insurance, in adequate amounts and coverage reasonable in the circumstances and foreseeably acceptable to Seller as to any one occurrence, at Buyer's sole expense, with reputable and financially responsible insurance companies, insuring against any and all public liability and any indemnifications provided to Seller, including injuries or death to persons and damage to property, arising out of or related to the Goods or Services or the Buyer's performance hereunder. All such insurance coverage shall name Seller as loss payee and additional insured.

## **16. Installation**

If Buyer purchases any Goods that require installation or erection, and Services for installation are not being supplied, Buyer shall, at its expense, make all arrangements necessary to install, erect and operate the Goods. If Buyer is required to install or erect any Goods, Buyer shall install the Goods in accordance with any Seller and manufacturer's instructions. Buyer shall indemnify and hold harmless Seller from and against any and all claims, losses, liabilities, damages and expenses (including but not limited to attorneys' fees and other costs of defence) arising from or otherwise connected with Buyer's or its agent's failure to properly install the Goods.

## **17. Intellectual Property Rights**

Any designs, patents or trademarks or other intellectual property in the goods supplied by the Seller shall be and remain the sole and exclusive property of the Seller and may be used only as expressly authorised by Seller. Any sketches, models or samples submitted by Seller shall remain the property of Seller, and shall be treated as confidential information unless Seller has in writing indicated a contrary intent. No use or disclosure of such sketches, models or samples, or any design or production techniques revealed thereby, shall be made without the express, prior written consent of Seller. Buyer shall not use the Seller's confidential information, or permit it to be accessed or used, for any purpose or otherwise in any manner

to the Seller's detriment, including without limitation, to reverse engineer, disassemble, decompile or design around the Seller's confidential information, proprietary services, techniques, designs, products and/or confidential intellectual property

**18. Assignment or transfer**

18.1 No assignment or transfer or purported assignment or transfer of this contract on the part of the Buyer shall be permitted without the prior written consent of the Seller.

18.2 The Seller may assign this contract or any interest in it including without limitation the grant of a security interest in the Goods.

**19. General**

19.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

19.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

19.3 The Buyer has no right to set off against the Price any amounts which the Buyer contends that the Seller may owe to the Buyer irrespective of any alleged warranty claim.

19.4 Nothing in these terms shall constitute nor imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties. Neither party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

19.5 If any provision of these Conditions 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.

19.6 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of The President for the time being of the Law Society for England and Wales, in accordance with the provisions of the Arbitration Act 1996

19.7 Force majeure. Neither party shall be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.

19.8 For the avoidance of doubt nothing in this agreement shall confer on a third party any benefit or right to enforce any term of this agreement.

19.9 Further assurance. Each party to this Contract shall at the request and expense of the other or any of them execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.

19.10 Entire Agreement. This Contract constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understanding and agreements between the parties with respect thereto. There are no representations,

warranties, terms, conditions, undertakings, or collateral agreements, express, implied or statutory between the parties other than as expressly set forth in this Contract.

- 19.11 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

**Guarantor provisions**

- 20.1 In consideration of the agreement by the Seller to enter into this Agreement at the request of the Guarantor, as director of the Buyer, the Guarantor undertakes to procure the strict observance and performance by the Buyer of each and all of his obligations contained or referred to in his Agreement including without limitation the terms for payment and the provisions of clause 7 of this Agreement.

- 20.2 In the event of default by the Buyer the Guarantor shall guarantee as primary obligator to the Seller payment of all money, obligations and liabilities contracted under this Agreement