

STANDARD TERMS AND CONDITIONS OF SALE

1. Definitions and Interpretation

- 1.1 In these Conditions, the following words and expressions will have the following meanings:
- "Affiliate"** in respect of a person, any persons that Control, are Controlled by or are under common Control with that person from time to time and for this purpose "Control" means, in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise and "Controlled" will be construed accordingly
- "Business Day"** a day (other than a Saturday, Sunday or public holiday) when banks in the City of London are open for business
- "Conditions"** the terms and conditions set out in this document
- "Contract"** the contract between the Supplier and the Customer for the sale and purchase of the Goods incorporating these Conditions and formed in accordance with Condition 2.3
- "Customer"** the person who purchases the Goods from the Supplier
- "Customer Data"** the data and/or materials supplied by or on behalf of the Customer, (otherwise than by the Supplier) for the purpose of using the Goods or facilitating the Customer's use of the Goods
- "Delivery"** the Goods' arrival at the Delivery Location and the date of such arrival shall be the **"Delivery Date"**
- "Delivery Location"** has the meaning given in Condition 4.2
- "Force Majeure Event"** has the meaning given in Condition 14
- "Goods"** the goods or services (or any part of them) set out in the Order, including the Integral Software
- "Integral Software"** the computer software embedded in or forming an integral part of the Goods
- "IPR"** all intellectual property rights in any part of the world and includes copyrights and neighbouring rights, patents, utility models, rights in inventions, registered and unregistered trade and service marks, rights in business and trade names and get-up, rights in passing off, rights in domain names, registered designs, unregistered rights in designs, database rights, and in each case all rights of a similar or corresponding character and all applications and rights to apply for the protection of any of the foregoing
- "Order"** the Customer's order for the Goods, as set out in the Customer's purchase order form or the Customer's written confirmation of the Supplier's quotation as the case may be
- "Price"** the price set out in the relevant Order or, if no price is quoted, the price set out in the Supplier's published price list in force at the Delivery Date
- "Specification"** any specification for the Goods, including any related plans and drawings, that is produced by the Supplier
- "Supplier"** the relevant Supplier Group Company that enters into the Contract
- "Supplier Group Company"** each of Quixant plc and its Affiliates from time to time
- 1.2 In these Conditions, the following rules of interpretation apply:
- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3 reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.5 the headings do not affect the interpretation or construction of these Conditions; and
- 1.2.6 words in the singular include the plural and in the plural include the singular.
- ### 2. Contract Formation
- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods from the Supplier in accordance with these Conditions. The Customer shall ensure that the terms of the Order and any relevant Specification are complete and accurate. For the avoidance of doubt, the Supplier is under no obligation to accept the Order.
- 2.3 The Contract is formed only when the Supplier issues written acceptance of the Order or, if earlier, when the Supplier delivers the Goods to the Customer. The Contract is non-cancellable and the Price is non-refundable.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier or any Supplier Group Company and any descriptions or illustrations contained in its or their catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Supplier and the Customer for the sale of the Goods or have any contractual force.
- 2.5 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue and may be withdrawn by written or oral notice to the Customer at any time before the Supplier accepts the Order.
- ### 3. Goods
- 3.1 The Goods are described in the Supplier's (or relevant Supplier Group Company's) catalogue, its website or the Specification (as the case may be).
- 3.2 The Supplier reserves the right to amend the specification of the Goods described in the Supplier's catalogue, website or the Specification (as the case may be). The Supplier may substitute any materials or parts used in the Goods with alternative materials or parts that provide materially equivalent quality and performance.
- ### 4. Delivery
- 4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note showing the date of the Order, relevant reference numbers, the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the balance of any Goods remaining to be delivered.
- 4.2 Delivery of the Goods shall be made either:

- 4.2.1 by the Customer or its carrier collecting the Goods from the Supplier's premises or from another location ; or
- 4.2.2 where agreed in writing by the Supplier, by the Supplier or its carrier delivering the Goods to the agreed location, in each case, the **"Delivery Location"** and in either case within three Business Days of the Supplier notifying the Customer that the Goods are ready.
- 4.3 Where applicable, the Contract shall specify the relevant Incoterm that applies to the Delivery of the Goods and if not so specified the Goods shall be delivered Ex-Works (Taiwan). **"Incoterm"** 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 these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 4.4 Where the Supplier agrees to deliver the Goods otherwise than at its premises, the Supplier shall be under no obligation under section 32(2) of the Sale of Goods Act 1979.
- 4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the Price. The Supplier shall have no liability for any delay or failure to deliver the Goods to the extent that such delay or failure is caused by a Force Majeure Event or the Customer's delay or failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7 If the Customer fails to take or accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- 4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- 4.7.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.8 If ten Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the Price or charge the Customer for any shortfall below the Price.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- ### 5. Quality
- 5.1 The Customer shall test and inspect the Goods on Delivery and notify the Supplier of any defect in the Goods within 5 Business Days of the Delivery Date. The Supplier shall have no liability for any defect which should have been apparent on Delivery which is not notified in accordance with this Condition.
- 5.2 Subject to Conditions 5.3 and 5.4, the Supplier warrants that for 12 months from the Delivery Date (**"Warranty Period"**), the Goods shall:
- 5.2.1 conform in all material respects with their description and any applicable Specification; and
- 5.2.2 be free from material defects in design, material and workmanship, the **"Goods Warranty"**.
- 5.3 Subject to Condition 5.4, if:
- 5.3.1 the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the Goods Warranty; and
- 5.3.2 the Supplier is given a reasonable opportunity of examining such Goods; and
- 5.3.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Goods and this shall be the Customer's sole and exclusive remedy for any failure of the Goods to comply with Goods Warranty. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.4 The Supplier shall not be liable for Goods' failure to comply with the Goods Warranty if:
- 5.4.1 the Customer makes any further use of such Goods after giving notice in accordance with Condition 5.3;
- 5.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice;
- 5.4.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- 5.4.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 5.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 5.4.6 the Goods differ from their description or the Specification (as the case may be) as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 Except as set out in these Conditions, the Goods are provided "AS IS" and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. In particular:
- 5.5.1 the Supplier does not warrant that the Customer's use of the Goods will be uninterrupted or error-free; or that the Goods and/or the information obtained by the Customer through the Goods will meet the Customer's requirements; and
- 5.5.2 the Supplier is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Goods may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and

5.5.3 the Customer assumes sole responsibility for results obtained from the use of the Goods and conclusions drawn from such use.

6. Risk and Title

6.1 The risk in the Goods shall pass to the Customer on Delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for the Goods and for any other goods or services provided to the Customer.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and

6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time;

but may otherwise resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Condition 9.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, the Supplier or its agents may enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Intellectual Property

7.1 All IPR in the Goods (whether owned by the Supplier or a third party) shall remain vested in the Supplier (or third party licensor) and except as expressly provided in this Condition 7 nothing in these Conditions shall operate to transfer or permit the transfer of or in any IPR (or any other rights or licences) in respect of the Goods to the Customer.

7.2 The sale of the Goods and the publication of any information or technical data relating thereto may incorporate products which are the subject of IPR belonging to third parties and the Supplier gives no warranty that the use of the Goods by the Customer will not constitute an infringement of such IPR.

7.3 In relation to each item of Integral Software the copyright, design right or other intellectual property rights in which are owned by the Supplier or its third party licensors:

7.3.1 the Customer is purchasing the media on which such Integral Software is recorded or embedded only;

7.3.2 the Supplier hereby grants to the Customer a non-exclusive and (except as provided in Condition 7.3.4 below) non-transferable licence to use such Integral Software in the form in which it is embedded in or integrated into the Goods at the time of delivery to the Customer as an integral part of the Goods for use in conjunction with the remainder of the Goods but subject to the condition that the Goods are used only for their intended purpose and for the Customer's internal business purposes only;

7.3.3 except as expressly permitted by this Condition 7.3 and save to the extent and in the circumstances expressly required to be permitted by law, the Customer shall not rent, lease, sub-license, loan, copy, modify, adapt, merge, translate, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of such Integral Software or use, reproduce or deal in such Integral Software or any part thereof in any way. In respect of any such activities claimed to be made permissible by law, the Customer undertakes first to make a prior written statement to the Supplier identifying the activity and stating why the Customer believes it to be permissible, and to refrain from commencing any such activity until the Supplier shall have had a reasonable opportunity to consider and thereafter give a response to the Customer in respect of each statement;

7.3.4 the Customer shall be entitled to transfer the benefit of the licence granted pursuant to Condition 7.3.2 (the "Licence") and the right to transfer the Licence in terms of this Condition 7.3.4 to any purchaser of the Goods (and solely in connection with the sale of the Goods) provided the purchaser agrees before making such purchase to be bound by the terms of this Condition 7.3.4 including the provisions of this Condition 7.3. If the purchaser does not accept such terms then the Licence shall automatically and immediately terminate;

7.3.5 the Licence shall remain effective without limit in time until it is terminated in accordance with Condition 7.3.4 or until the Customer shall terminate it by erasing or destroying such Integral Software. The Licence shall also terminate automatically and immediately if the Customer shall fail to abide by the terms of this Condition 7.3. Upon termination of the Licence, for whatever reason, the Customer shall deliver up to the Supplier the media on which such Integral Software is recorded or embedded (and all copies thereof (if any) in the Customer's possession) or, at the Supplier's option, shall erase or otherwise destroy such Integral Software (and all copies thereof (if any) in the Customer's possession) and shall certify to the Supplier that the same has been done.

7.4 The Supplier shall at the request of the Customer make available to a Regulator the Bill of Materials subject to the Regulator entering into appropriate confidentiality agreements to the reasonable satisfaction of the Supplier to protect its confidential information. For the purposes of this Condition, "Bill of Materials" is a list of materials including hardware and software that when assembled comprises the Goods and "Regulator" means any government authority (anywhere in the world) which issues or grants any gaming machine licence or approval or admits persons to any roll or list or is empowered to do any or all of the foregoing, necessary or appropriate for the lawful operation in any jurisdiction or location of gaming and related business.

7.5 The Price includes the right for the Customer to use the Integral Software in accordance with Condition 7.3.

7.6 The Customer shall own all right, title and interest in and to all of the Customer Data (including all IPR therein) and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

7.7 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Supplier to use reasonable commercial endeavours to restore the lost or damaged

Customer Data from the latest back-up (if any) of such Customer Data maintained by Supplier. Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties (if any) sub-contracted by Supplier to perform services related to Customer Data maintenance and back-up).

7.8 The Customer acknowledges that the Goods may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Goods.

8. Price and Payment

8.1 The Customer shall pay the Supplier the Price for the Goods. The Supplier may increase the Price due to increased costs, including those relating to exchange rates, labour, materials and transport.

8.2 The Price is inclusive of the costs and charges of packaging but exclusive of the costs and charges of insurance and transportation which shall be invoiced to and payable by the Customer.

8.3 All Prices are quoted and shall be paid in the currency specified in the Order or if none is stated then in United States dollars.

8.4 The Price is exclusive of any and all taxes, duties, fees, and levies imposed from time to time by any government or other authority (including VAT, GST and other applicable sales taxes) which shall be payable by the Customer in addition.

8.5 The Supplier may invoice the Customer for the Goods on or at any time after the Delivery Date. The Customer shall pay the Supplier's invoices in full and in cleared funds on the date or dates specified therein. Payment shall be made by direct transfer to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

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

8.7 If the Customer fails to make any payment due to the Supplier by the due date then the Supplier may without prejudice to its other rights and remedies:

8.7.1 charge the Customer late payment interest at 8% or any higher rate permitted under applicable law; and/or

8.7.2 without liability to the Customer, disable the Customer's password, account and access to or use of all or part of the Goods and the Supplier shall be under no obligation to re-enable access to or use of the Goods while the invoices concerned remain unpaid.

9. Customer Insolvency

9.1 If the Customer becomes subject to any of the events listed in Condition 9.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all sums payable at any time in respect of Goods delivered to the Customer shall become immediately due.

9.2 For the purposes of Condition 9.1, the relevant events are:

9.2.1 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or

9.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) these events taking place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or

9.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or

9.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order; or

9.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

9.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or

9.2.7 (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or

9.2.8 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or

9.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 9.2.1 to Condition 9.2.8 (both inclusive); or

- 9.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 9.2.11 the financial position of the Customer deteriorates to such an extent that in the opinion of the Supplier the capability of the Customer adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- 9.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 9.3 The Customer shall notify the Supplier immediately upon the occurrence of a relevant event as described in Condition 9.2.
- 10. Customer Obligations**
- 10.1 The Customer shall:
- 10.1.1 provide the Supplier with:
- (a) all necessary co-operation in relation to the Contract; and
- (b) all necessary access to such information as may be required by the Supplier; in order to provide the Goods, including Customer Data, security access information and configuration services;
- 10.1.2 comply with all applicable laws and regulations with respect to its activities under the Contract including in respect of:
- (a) the importation of the Goods into the country of destination and for the payment of any duties thereon; and
- (b) the use, recycling and disposal of waste electrical and electronic equipment (for which the Customer shall be solely responsible);
- 10.1.3 carry out all its responsibilities hereunder in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 10.1.4 ensure that the authorised users use the Goods in accordance with these Conditions and shall be responsible for any user's breach of the Contract;
- 10.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Supplier, its contractors and agents to perform their obligations hereunder;
- 10.1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 10.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 11. Limitation of Liability**
- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's of any Supplier Group Company's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 11.1.2 fraud or fraudulent misrepresentation; or
- 11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 11.1.4 defective products under the Consumer Protection Act 1987; or
- 11.1.5 any matter in respect of which it would be unlawful to exclude or restrict liability.
- 11.2 Subject to Condition 11.1, the Supplier and each Supplier Group Company shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
- 11.2.1 loss of profit; or
- 11.2.2 loss of revenue, loss of production or loss of business; or
- 11.2.3 depletion of goodwill and/or similar losses or loss, loss of reputation or loss of opportunity; or
- 11.2.4 corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under or in connection with the Contract; or
- 11.2.5 liability of the Customer to third parties; in each case whether direct, indirect or consequential.
- 11.3 Subject to Conditions 11.1 and 11.2, the Supplier's and each Supplier Group Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, shall not exceed the Price.
- 11.4 Subject to Conditions 11.1 and 11.2, the Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Goods, or any actions taken by the Supplier at the Customer's direction.
- 11.5 This Condition 11 shall survive termination of the Contract.
- 12. Customer Indemnity**
- 12.1 The Customer shall indemnify the Supplier and all Supplier Group Companies from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier or any Supplier Group Company arising out of or in connection with any claim, proceedings or allegation:
- 12.1.1 relating to the Customer's or its end customers' use of the Goods.
- 12.1.2 relating to the Customer's failure to comply with its obligations under Condition 10; and
- 12.1.3 relating to infringement of IPR or other rights in or to any specification supplied by the Customer for use in the manufactured of the Goods.
- 13. Termination**
- 13.1 Either party may terminate the Contract immediately by giving written notice to that effect to the other party if that other party commits a material breach of the Contract which (where capable of remedy) is not remedied within 14 days of notification of such breach by the party not in breach.
- 13.2 The Supplier may terminate the Contract immediately by giving written notice to that effect to the Customer if the Customer becomes subject to any of the events listed at Condition 9.2.
- 13.3 On termination of the Contract for any reason:
- 13.3.1 all licences granted by the Supplier to the Customer shall immediately terminate;
- 13.3.2 each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
- 13.3.3 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- 13.3.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- 14. Force Majeure**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" is any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 15. Notices**
- 15.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and in the English language, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition 15.1, and shall be delivered personally, sent by pre-paid first-class post (by airmail post if to an address outside the country of posting), commercial courier or fax.
- 15.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 15.1; if sent by pre-paid first-class post, at 9.00 am on the second Business Day after posting (five Business Days if sent by airmail post); if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- 15.3 The provisions of this Condition 15 shall not apply to the service of any proceedings or other documents in any legal action.
- 16. Miscellaneous**
- 16.1 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier or any Supplier Group Company which is not expressly set out in the Contract.
- 16.2 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 16.3 If any court, tribunal or competent authority finds that any provision of the Contract (or part of any provision) is wholly or partly invalid, illegal, void, voidable, unreasonable or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 16.4 A waiver of any right or remedy under the Contract 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 16.5 Except as provided herein in relation to Supplier Group Companies, the parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.6 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by authorised representatives of the parties.
- 16.7 Nothing in these Conditions is intended to or shall operate to create a partnership or joint venture between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 17. Governing Law and Jurisdiction**
- 17.1 Subject to Condition 17.2, the Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.
- 17.2 Either party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.