

TERMS & CONDITIONS OF HYPERION GROWLIGHTS FOR PRODUCTS AND SERVICES

SCOPE

1. In these terms and conditions of sale ("Terms"), the "Seller" means Hyperion Grow Lights Limited (Co. no. 12347911) with its registered office at 329 Euston Road, London, NW1 3AD, the "Buyer" means the person who purchases the Products and/or Services from the Seller, the "Products" and "Services" are those identified in the Seller's quotation or order acknowledgement, the "Specification" is that published by the Seller from time to time, "Faulty Products" are those which do not comply with the Specification or the Seller's warranty, the singular includes the plural and the opposite applies and clause headings are for convenience and shall not affect interpretation.
2. These Terms shall apply to all purchase orders ("Orders") from Buyer which are accepted by Seller. Such acceptance by Seller will only be on these Terms and will be by the acceptance of a signed quotation, the issue of an Order acknowledgement ("Order Acknowledgement") or allocating Products to the Order or mobilisation to provide the Services. These Terms and anything contained in the Seller's quotation and/or Order Acknowledgement shall comprise the entire agreement between the parties relating to the subject matter hereof and shall over-ride and supersede any terms and conditions of the Buyer or provisions of Buyer's Order which are in addition to or inconsistent therewith. Provisions, terms and conditions within any Order or other document submitted by Buyer to Seller are hereby expressly rejected and shall not be binding upon Seller [without its prior specific written consent]. Buyer agrees that Seller's failure to object to any such provisions, terms or conditions shall not constitute acceptance by Seller of them or of any waiver of or modification to provisions of these Terms.
3. No modification of these Terms shall be valid unless in writing and signed by a person authorized by Seller. These Terms shall not be supplemented by any trade usage or any course of prior dealings or acquiescence in any course of performance.

QUOTATIONS & ORDERS

- 1.1. Quotations are valid for 30 days from issue. All Orders are subject to acceptance by Seller. Seller reserves the right to accept or reject any Order in whole or in part and, without prejudice to any other remedy, to cancel any unfulfilled Order or to suspend Services under or shipment of any unfulfilled Order in the event of any breach by Buyer of its obligations under these Terms including any action/inaction which delays Seller's performance.
- 1.2. Any samples, drawings, images, descriptive matter (other than the Specification) or advertising material produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are provided for the sole purpose of giving an approximate idea of the Products/ Services featured or referred to in them. They do not form part of the contract.

TAXES

Unless otherwise agreed, all taxes, levies and duties of any nature whatsoever applicable to Products and Services supplied hereunder shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the relevant taxing authority. Unless otherwise specified, the prices shown do not include VAT or any other taxes.

PRICES AND PAYMENT

1. Prices in a current written quotation from Seller shall be honoured in accordance with its terms, if accepted within 30 days of its issue.
2. Subject to clause 4.1, the Seller may, by giving notice to the Customer at any time before delivery, increase the price of the Products to reflect any increase in the cost of the Products, including but not limited to where due to: (a) any factor beyond the Seller's reasonable control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); (b) any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the Specification; or (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Seller adequate or accurate information or instructions.
3. All Orders are also subject to credit approval before shipment. Invoices can be issued on shipment of the Products. Where Buyer has established

credit, payment shall be due thirty (30) days from date of invoice or as per the Seller's conditions on its quotation. Overdue accounts shall bear interest at a rate of 5% (five percent) per annum over the HSBC Bank UK base rate in force during the period of payment default, without prejudice to the Seller's right to suspend further deliveries of Products or the supply of further Services. Payments are to be paid in US \$, € or £ sterling, as specified in the Seller's quotation or Order Acknowledgement. Each shipment shall be considered a separate and independent transaction and payment for it shall be made accordingly. If, in Seller's judgment, Buyer's financial condition at any time does not justify the payment terms as then enjoyed, Seller may cancel or suspend provision of Services or shipment of any unfulfilled Order for Products, unless Buyer agrees to, and immediately pays for such Products or Services to be provided or, in the case of all Products and Services ordered but not shipped or provided, agrees to pay in advance as applicable, or both, at Seller's option. If, despite any default by Buyer, Seller elects to continue to make shipments of Products or provide Services, Seller's action shall not constitute a waiver of any default by Buyer or prejudice Seller's legal remedies in respect of such default.

- 4.4. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller 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 Seller to the Customer.
- 4.5. Prices do not include the costs of any environmental charges including any approved uniform visible fee or any other fee arising out of the Directive 2002/96/EC on Waste Electrical and Electronic Equipment or any similar or derived legislation, and such additional costs will be invoiced to and payable by the Customer.

TITLE AND DELIVERY

- 5.1. Delivery dates are approximate. Delivery is completed [when the delivery vehicle enters the delivery location, prior to unloading]. Seller shall use reasonable efforts to fill all Orders according to the shipment schedule provided by Seller at time of acceptance of the applicable Order; but in no event shall Seller guarantee shipment according to such schedule or be liable for damages due to delays in delivery. However, should there be a serious delay in delivery (otherwise than as a result of force majeure), Buyer may give written notice to Seller to deliver within a reasonable period (being not less than [21] days). Should Seller fail to so deliver, Buyer shall have the right to terminate any undelivered portion of the Order subject to the delay, by giving written notice to the Seller. Buyer shall supply with all Orders the necessary information to permit Seller to commence its work, together with any import licences and/or permits and related certificates which may be necessary, and which shall be supplied by Buyer at Buyer's expense.
- 5.2. Unless otherwise agreed in the official quotation, all shipments shall be made by Seller FCA (as defined in the ICC Incoterms 2020). Liability for loss or damage shall pass to Buyer upon Seller's delivery of the Products to the Buyer's carrier. Any Products held or stored for Buyer shall be at Buyer's risk and expense if, at Buyer's request, a shipment is postponed beyond the agreed delivery date. Claims against Seller for shortages of Products delivered must be made within three (3) days after arrival of shipment at the destination specified in the Order. Claims against Seller relating to shipping or the carrier must be made within three (3) days after such arrival date. Unless otherwise agreed in writing, Seller may make partial shipments and these Terms shall apply separately to each shipment. Invoice queries must be raised within 10 days of the date of invoice. Hyperion Grow Lights Limited by email to info@hyperiongrowlights.com. Products purchased by the Customer cannot be returned, unless they are Faulty Products.
- 5.3. If the Customer fails to accept delivery of the Products within three Business Days of the Seller notifying the Customer that the Products are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the contract: (a) delivery of the Products shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Seller notified the Customer that the Products were ready; and (b) the Seller shall store the Products until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 5.4. If ten Business Days after the day on which the Seller notified the Customer that the Products were ready for delivery the Customer has not accepted actual delivery of them, the Seller may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Products or charge the Customer for any shortfall below the price of the Products.

- i.5. Title to the Products shall not pass to the Customer until the earlier of the Seller receives payment in full (in cash or cleared funds) for the Products and any other Products that the Seller has supplied to the Customer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums
- i.6. Until title to the Products has passed to the Customer, the Customer shall: (a) not remove, deface or obscure any identifying mark or packaging on or relating to the Products; (b) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; (c) notify the Seller immediately if it becomes subject to any of the events listed in clause 14.1 (b) to clause 14.1(d); and (d) give the Seller such information relating to the Products as the Seller may require from time to time.
- i.7. If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1 (b) to clause 14.1 (d), then, without limiting any other right or remedy the Seller may have the Seller may at any time: (a) require the Customer to deliver up all Products in its possession that have not been irrevocably incorporated into another product; and (b) if the Customer fails to do so promptly, enter any premises or vehicles of the Customer or of any third party where the Products are stored in order to recover them.

i. WARRANTY

- i.1. Subject to the limitations and exclusions in these Terms, Seller warrants solely to Buyer that: Products will be free from defects in material and workmanship and substantially conform with Seller's applicable Specifications for sixty (60) months from shipment to Buyer or twenty-five thousand hours (25,000) of usage, whichever occurs first
 - i.2. The warranty period starts from date of delivery but is limited to sixty (60) months from shipment to Buyer .
 - i.3. Products must be installed and used in accordance with Seller's Specification and Installation & Maintenance Manual.
 - i.4. Horticultural crop protection products, cleaning agents and/or other chemicals (e.g., pesticides, fungicides and insecticides) ("Agents") cannot be used and/or applied in a location where Products are installed in concentrations above the values prescribed by the supplier(s) of such Agents. Any breach of this condition will result in the Seller's warranty being void in relation to the Products.
 - i.5. Seller's system warranty applies to the whole of the Products for the defined period or hours of usage independent of potential component replacement during that period or usage.
 - i.6. When returning Products under warranty, Buyer must identify individual potential returns with its project ID and complaint information including installation date, usage conditions and fault description.
 - i.7. For all Products, this warranty will only apply when there are two (2) percent (%) or greater LED defects per module or where there is a component failure (fan or driver). It is at the Seller's discretion as to Product or component replacement, dependent on fault type.
 - i.8. Failure to observe the installation and maintenance requirements detailed in the Installation and Maintenance Guide (including but not limited to regular inspection, annual cleaning and notifying the Seller promptly of non-functioning Products) will invalidate the warranty.
 - i.9. The Seller reserves the right to require the Buyer to keep a maintenance and cleaning log for inspection on an annual basis, where stipulated in the Seller's proposal/quotation. The Seller will require access to the premises in which the Products are installed and their fixtures for inspection purposes. Failure to do so will invalidate the warranty.
 - i.10. Seller provides no warranty for (a) prototypes of Products, (b) Products subject to development or experimental work, or (c) free samples of production Products, all of which are supplied "AS IS, WITH ALL DEFECTS".
 - i.11. Seller does not warrant, and this warranty specifically excludes, (i) the suitability of the Products for any specific use or application not approved by the Seller, or (ii) compatibility of the Products with any other products not provided by the Seller, or (iii) guarantee the information on the technical data sheets (as the values provided are typical values, and not a performance claim specific to any individual Product). Performance will be dependent on spectrum and the Buyer's specific options.
 - i.12. Seller shall have no liability under this warranty unless:
 - i.13. Seller receives written notice from Buyer promptly following discovery of any suspected non-conforming Products which clearly describes the suspected non-conformance;
 - 6.13.1 Buyer, upon Seller's written authorization, immediately returns at Buyer's expense to Seller any suspected non-conforming Products in the form and packaging in which originally shipped; and
 - 6.13.2 Seller's tests determine that such Products do not substantially conform to their Specification.
- 6.14. In no event shall Seller be responsible for any non-conformance or other defect in Products arising as a result of improper handling during or after shipment; exposure to environmental or operating conditions not within those stipulated in Seller's applicable Specifications; improper installation, application or storage; misuse, tampering, disassembly; test, repair, modification, accident, negligence, defects , problems, or failures caused by the Buyer's product into which the Product is incorporated or by third party products, or any other cause not attributable to Seller's conduct . This warranty extends to Buyer only.
 - 6.15. Seller's liability for breach of this warranty shall be limited to, at Seller's option within reasonable time, the repair or replacement of the Faulty Products. Fixtures for replacement Products may not be like for like (for example, the brackets, drivers etc may be different but the previous performance will either be matched or surpassed). Labour costs are not covered. Replacement drivers which are external and fans under warranty will be supplied by the Seller, but the Buyer needs to remove and replace faulty drivers and fans in line with instructions in the Installation and Maintenance Guide. Where drivers are internal and a warranty claim is accepted, the driver (and fans) will be replaced by the Seller (or an approved installer on site) For whole unit replacement under warranty, if required, the Seller will supply the unit and the Buyer is responsible for installation. If Product is the subject of a valid warranty claim, transportation charges for the return of Product to the Customer within the United Kingdom will be paid by the Seller. For all other locations, the warranty excludes all costs of shipping, customs clearance and other related charges.
 - 6.16. Any allegedly Faulty Products returned by the Buyer that are subsequently tested by the Seller and found not to be faulty will be returned to the Buyer and the Seller reserves the right to require the Buyer to pay an administration charge, as well as carriage, insurance and duties..
 - 6.17. The balance of the original warranty period for the Products in question shall apply to any repaired or replacement Products supplied by the Seller.
- 6.17 BUYER'S EXCLUSIVE REMEDY AND SELLER'S SOLE OBLIGATION AND ENTIRE LIABILITY SHALL BE AS STATED IN THIS LIMITED WARRANTY IN LIEU OF ALL OTHER OBLIGATIONS AND LIABILITIES OF SELLER TO BUYER WHATSOEVER AND HOWSOEVER ARISING IN ANY WAY RELATED TO THE SALE OR SUPPLY OF THE PRODUCTS, THEIR USE OR OTHERWISE WHETHER ARISING IN CONTRACT, TORT, UNDER STATUTE OR OTHERWISE. THIS LIMITED WARRANTY IS THE EXCLUSIVE WARRANTY PROVIDED BY SELLER. ALL OTHER REPRESENTATIONS, GUARANTEES, CONDITIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, RELATED TO THE SALE OR SUPPLY OF PRODUCTS OR THEIR USE BY BUYER OR OTHERS, INCLUDING WITHOUT LIMITATION ANY IMPLIED CONDITIONS AND WARRANTIES OF SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE SO FAR AS PERMITTED BY LAW, SPECIFICALLY DISCLAIMED.**
- ## **7. INDEMNITY & LIABILITY**
- 7.1. Buyer shall indemnify, defend and hold Seller harmless from all claims, demands, actions, proceedings and liabilities for all losses, costs, expenses, damages and injuries of and to any third parties, suffered or incurred by the Seller, whether arising in, contract, tort or otherwise, based upon or arising out of Buyer's use or resale of any Products (whether incorporated in Buyer's products or otherwise).
 - 7.2. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THESE TERMS, BUT SUBJECT TO CLAUSES 7.3 and 7.4 BELOW, SELLER IN NO EVENT SHALL BE LIABLE IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE FOR ANY LOSS, DAMAGE, COST, EXPENSE OR LIABILITY (IRRESPECTIVE OF CAUSE) SUFFERED OR INCURRED TO ANY PERSON OR TO ANY REAL OR PERSONAL PROPERTY IN RESPECT OF ANY LOSS, DAMAGE OR INJURY RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATIONS HEREUNDER OR FROM NEGLIGENCE OF SELLER, ITS EMPLOYEES OR AGENTS OR IN ANY WAY RELATED TO ITS ACCEPTANCE OF ANY ORDER, THE SALE OR SUPPLY OF PRODUCTS OR SERVICES, THEIR USE OR OTHERWISE, IN EXCESS OF THE SELLER'S MAXIMUM AGGREGATE LIABILITY TO BUYER WHICH SHALL BE THE AMOUNT PAID BY BUYER FOR RELEVANT PRODUCTS / SERVICES UNDER THE ORDER TO WHICH THE CLAIM RELATES.
 - 7.3. Nothing in these Terms detracts from any Buyer right or Seller obligation which either party is prohibited from seeking to exclude or limit by law, and in particular Seller does not exclude or limit its liability for death or personal injury caused by its negligence or liability for fraud.
 - 7.4. SELLER IN NO EVENT SHALL BE LIABLE IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL LOSS OR DAMAGE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, BUSINESS

REVENUES OR OTHERWISE EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

I. SELLER'S PROPRIETARY TECHNOLOGY.

Unless agreed otherwise in writing by Seller, Seller shall retain title to and possession of all its proprietary technology, including but not limited to any integrated circuits, cells, designs, design elements, photomasks, tools, models, patterns, dies, moulds, jigs, fixtures, manufacturing processes and know-how, developed, made or obtained by or for Seller or used by Seller for furnishing Products, Custom Products (as defined in Section 9 below) and Services under any Order accepted by Seller. Seller may use this technology in any Products, in whole or in part, even if developed expressly for use in Custom Products.

I. CUSTOM PRODUCTS AND SERVICES

- 1.1. For products manufactured in whole or in part to Buyer's designs, specifications or instructions (collectively Custom Products. Seller warrants only to Buyer that Custom Products when shipped to Buyer shall substantially conform to such designs, specifications and instructions accepted in writing by Seller. This warranty is subject to the limitations and exclusions set out in Section 6 and 7 (Warranty and Limitation of Liability) above.
- 1.2. Seller provides no representation, guarantee, condition or warranty, expressed, implied or statutory, with respect to: (a) the correctness or applicability of Buyer's designs, specifications or instructions for Custom Products or (b) the functionality or performance of Custom Products or any products derived from or using any Custom Products.
- 1.3. Development and engineering design services, including but not limited to those with associated non-recurring engineering charges, as well as other than normal product testing provided by Seller ("Services") are supplied on a reasonable efforts basis. Seller retains sole discretion to assign and control its staff in the performance of Services. Charges for Services shall be as specified in the Seller's quotation or Order Acknowledgement and shall be invoiced at the end of each month and paid in 30 days. Clause 4 and the other Terms shall apply to such charges (except where inconsistent). Development times and milestones provided by Seller for Services are estimates only. No representation, guarantee, condition or warranty, express, implied or statutory, is made by Seller with regard to the success, timeliness or successful result of the Services.
- 1.4. The Buyer acknowledges that design changes may be necessary to correct unanticipated deficiencies resulting from the manufacturing process, functional, operational or other anomalies. Revisions, modifications or testing requested by Buyer beyond the scope of an Order as accepted by Seller may result in additional charges to Buyer.

0. SUBSTITUTIONS AND MODIFICATIONS

- 0.1. Seller reserves the right to modify the Specifications of Products designed by or for Seller without notice provided that the modification will not materially affect the performance, form, or fit of the affected Products.
- 0.2. In particular, the Seller reserves the right to amend the Specifications of Products (and any Buyer specification for Custom Products) if required by any applicable statutory or regulatory requirement.

1. FORCE MAJEURE

Neither Buyer nor Seller shall be liable for failures in performance, including delay or non-shipment, resulting from acts or events beyond its reasonable control ("Force Majeure Event"). Such acts or events shall include, but not be limited to, acts of God, civil or military authority, civil disturbance, fire, strikes, lockouts or slowdowns, factory or labour conditions, adverse weather, errors in manufacture, inability to obtain necessary labour, materials or manufacturing facilities, delayed issuance of export control licences, shipping or other transport delays, the effects of the UK's departure from the EU, epidemics or pandemics, or other "force majeure" events beyond the reasonable control of the non-performing party. In the event of such delay, the date of shipment shall, at the request of Seller, be deferred for a period equal to the time lost by reason of the delay and otherwise for a reasonable time.

2. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 2.1. Buyer shall indemnify, defend and hold Seller harmless against any cost, expense, liability and loss suffered or incurred by the Seller resulting from: (a) any claim of actual or alleged infringement or contributory infringement

of any patent, copyright, mask work, or other intellectual property rights ("IPRs") of any other person granted, existing or used at the time of acceptance of the applicable Order (collectively "Worldwide Specified IPRs") arising from compliance by Seller with Buyer's designs, specifications or instructions; and (b) any claim of actual or alleged infringement or contributory infringement of any Worldwide Specified IPRs which relates to the use or sale of any of the Products, Custom Products or the provision of any of the Services in a manner or for a purpose not specified by Seller or to any modification of the Products, Custom Products or Services unauthorized by Seller or to the use or sale of any product, equipment, device, machine or process which includes any of the Products or Custom Products or the combination of Products or Custom Products with other products not supplied by Seller unless authorized or carried out by Seller.

- 12.2. The sale or supply of Products, Custom Products and Services by Seller shall neither convey nor grant, except as otherwise provided in these Terms, any right, title, interest or licence, by implication, estoppel, or otherwise, under any IPRs covering combinations of the Products/Custom Products with other products, equipment, devices or machines or processes in which any of the Products or Custom Products may be used.
- 12.3. Subject to the foregoing and the limitations set out below, Seller shall defend Buyer against suit or claim of actual or alleged infringement or contributory infringement of any UK or European Member State patent of any other person granted or used at the time of acceptance of the applicable Order (collectively "Specified IPRs") against Buyer that any of the Products made to Seller's design by or for Seller infringe any Specified IPRs provided: (a) Seller is notified promptly in writing by Buyer of any notice of such claim; (b) Seller is given full authority and control of the defence of such claim and all negotiations for its settlement or compromise; and (c) Buyer has not made and shall not make any admission in respect to such alleged infringement.
- 12.4. In the event any of the Products become, or in Seller's opinion, are likely to become the subject of a claim of infringement of any Specified IPRs, or if the use of any of the Products is enjoined in any such infringement suit, Seller shall at its option and expense either procure for Buyer the right to continue use of such Products, replace such Products with non-infringing products, modify such Products so that they become non-infringing, or accept the return of the affected Products and refund Buyer the depreciated purchase price thereof (decided, in the Seller's absolute discretion, having regard to any use made). In no event shall Seller's total liability to Buyer under the foregoing indemnity exceed the purchase price of the allegedly infringing Products paid by Buyer.
- 12.5. Seller makes no express or implied condition, representation or warranty that the Products, Custom Products or Services will not infringe any third party IPRs. The foregoing states the entire liability of Seller with respect to infringement of third party IPRs by the Products, Custom Products and Services.

13. CANCELLATION AND RESCHEDULING

- 13.1. Unless agreed otherwise in writing by Seller, the following cancellation and rescheduling terms shall apply to all Orders: (a) Orders for Products (other than Custom Products) may not be cancelled or requested to be rescheduled by Buyer within thirty (30) days of their original scheduled shipment date(s) ("OSS Date(s)") except that Orders for such Products subject to a Seller last time buy notice may not be cancelled or requested to be rescheduled by Buyer at any time; (b) Orders for Custom Products may not be cancelled or requested to be rescheduled by Buyer within ninety (90) days or their manufacturing cycle time as indicated by Seller in its quotation or Order Acknowledgement, whichever is greater, of their OSS Date(s); (c) Orders for Services, including tooling, may be cancelled or requested to be rescheduled by Buyer at any time subject however in the case of cancellation, to payment by Buyer to Seller of that portion of the charges for the Services equal to the portion of the Services performed by the date of receipt of written notice of cancellation by Seller with the amount payable by Buyer being deemed to represent a reasonable estimate of Seller's liquidated damages and not a penalty; and (d) Seller shall determine its scheduled shipment date(s) for each Order requested to be rescheduled and agreed to by the Seller, which date(s) will be used to compute Buyer's cancellation and rescheduling rights in accordance with the above terms for such rescheduled Order.
- 13.2. Cancellation charges shall be due and payable within thirty (30) days of receipt of Seller's invoice for same.

14. TERMINATION

- 14.1. Without limiting its other rights or remedies, the Seller may terminate a contract with immediate effect by giving written notice to the Customer if:

(a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of the Customer being notified in writing to do so;

(b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the Customer's financial position deteriorates to such an extent that in the Seller's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 4.2. Without limiting its other rights or remedies, the Seller may suspend provision of the Products under the Contract or any other contract between the Customer and the Seller if the Customer becomes subject to any of the events listed in clause 14.1 (b) to clause 14.1 (d), or the Seller reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under a Contract on the due date for payment.
- 4.3. Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 4.4. On termination of the Contract for any reason the Customer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 4.5. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 4.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

5. ASSIGNMENT

Buyer may not assign or transfer its rights to any Order accepted by Seller, by operation of law or otherwise, without the prior written consent of Seller.

6. GOVERNING LAW

The laws of England, excluding conflict of law rules, shall govern any Order accepted by Seller and any contract for the supply of Products, Custom Products or Services and both Buyer and Seller accept the exclusive jurisdiction of the English courts to resolve any disputes. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) shall not apply to any such Order.

7. THIRD PARTIES

The terms of the Contracts (Rights of Third Parties) Act 1999 shall not apply to any contract incorporating these Terms

8. ENFORCEMENT COSTS

If Buyer fails to perform any of its obligations under any Order accepted by Seller, Buyer shall pay Seller all costs and expenses incurred by Seller in enforcing Seller's rights relating to such Order, whether by formal proceedings or otherwise, including all lawyer's fees, in addition to any other remedy available to Seller.

9. WAIVER

No waiver by either party of any breach of any of these terms and conditions by the other party shall be deemed to constitute a waiver of any other breach nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy hereunder operate as a waiver thereof. A waiver given by a party hereunder shall be binding upon such party only if in writing and signed by such party.

10. EXPORT CONTROLS

Buyer agrees that any export or re-export by it of Products, Custom Products or Services purchased hereunder shall be in strict compliance with all applicable export control laws and regulations. Buyer agrees to

promptly inform Seller if information provided by Buyer to Seller or the resulting Products or Services are subject to export control laws or regulations.

21. REPACKAGING

This Section applies if the Products are imported into the United States. The requirements of 19 U.S.C. 1304 and 19 C.F.R. Part 134 provide that Buyer and all subsequent purchasers or re-packers must ensure that the Products/Custom Products or their containers be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the Products/Custom Products or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the Products/Custom Products.

22. MISCELLANEOUS

- 22.1. Confidentiality. (a) Each party undertakes that it shall not at any time during the Contract and for a period of [three] years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party ("Confidential Information") or of any member of the group to which the other party belongs] except as permitted by clause 22.1 (b). For the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party. (b) Each party may disclose the other party's Confidential Information: to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause; and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 22.2. Entire agreement. (a) The Terms and the Contract constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms.
- 22.3. Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 22.4. Waiver. 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.
- 22.5. 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 clause shall not affect the validity and enforceability of the rest of the Contract.
- 22.6. Notices. (a) Any notice (other than for or in legal proceedings) given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the address commonly used by the recipient or otherwise notified.
 - (iii) Any notice shall be deemed to have been received:
 - (iv) if delivered by hand at the time the notice is left at the proper address;
 - (v) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; andif sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. Business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.