

MEGGITT UK

SELLING CONDITIONS

1 Definitions and Interpretation

1.1 In these Conditions the following words have the following meanings:

“**Affiliate**” means a company controlling, controlled by or in common control with the Company where “control” has the meaning set out in Section 416 of the Income and Corporation Taxes Act 1988.

“**Carrier**” means the agent or carrier designated by the Customer or, if none, the agent or carrier chosen by the Company on the Customer’s behalf who will accept delivery of the Goods or Serviced Customer Equipment on behalf of the Customer and transport the same to the Customer;

“**Company**” means Meggitt (UK) Limited, Meggitt Aerospace Limited or Meggitt Defence Systems Limited, as named on the quotation or order acceptance and/or who supplies the Goods and/or Services;

“**Customer**” means the person(s), firm, company or corporation who purchases the Goods and/or Services from the Company;

“**Customer Equipment**” means any item provided or made available to the Company by the Customer or by any purchasers from the Customer for the purpose of the Company performing any Repair Services on or in respect of such item pursuant to the Order;

“**Customer’s Property**” means any property of the Customer including any Tooling, ‘free issue’ material or Customer Equipment provided or made available to the Company whether at the premises of the Company, the Customer or any third party for the purpose of the Company supplying the Goods or performing any Services;

“**Goods**” means any goods agreed in the Order to be supplied to the Customer by the Company (including any part or parts of them);

“**Incoterms**” means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2000 edition;

“**Order**” means any contract between the Company and the Customer for the supply of Goods and/or provision of Services, resulting from a Customer request or purchase order placed by the Customer, on the terms under which it is accepted by the Company;

“**Repair Services**” means any process or treatment or other services (including without limitation maintenance, repair and overhaul services) agreed in the Order to be performed by the Company for Customer Equipment (including any part or parts of them);

“**Serviced Customer Equipment**” means any Customer Equipment in respect of which the Repair Services have been performed;

“**Services**” means any services (including without limitation any Repair Services) agreed in the Order to be provided to the Customer by the Company (including any part or parts of them);

“**Tooling**” means all dies, moulds, patterns, tools or similar items used in the manufacture of the Goods or the performance of the Services; and

“**Warranty**” means the warranty given by the Company in Condition 9.1.

1.2 In these Conditions references to a gender include every gender, reference to persons include an individual, company, corporation, firm or partnership and reference to the singular include the plural and vice versa as the context admits or requires.

1.3 Reference to a ‘day’ or ‘days’ means a calendar day or days.

1.4 Headings are for ease of reference only and shall not affect the construction of these Conditions.

2 Basis of Order

2.1 Subject to any variation under Condition 2.2, the Order will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever, whenever and howsoever delivered or notified).

2.2 Any variation to these Conditions and any representations about the Goods or Services shall have no effect unless expressly agreed in writing by a duly authorised representative of the Company.

2.3 Each purchase order or request for Goods or Services by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods or Services subject to these Conditions. The Customer shall ensure that the terms of its purchase order or request are complete and accurate.

2.4 The Company reserves the right to decline any purchase order placed by the Customer. No purchase order placed by the Customer shall be deemed to be accepted by the Company until a written acceptance of such order is issued by the Company, notwithstanding any earlier acknowledgement of receipt. Any purchase order shall be accepted entirely at the discretion of the Company.

3 Description and Specification of the Goods and Services

3.1 The description, part numbers and/or specification of the Goods and/or Services shall be set out in the Company’s quotation or, in its absence, the Company’s acceptance of order.

3.2 All drawings, descriptions, weights, dimensions and other specifications and advertising issued by the Company (whether in the Company’s catalogues, price lists, quotations, tenders or otherwise) are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them and they will not form part of the Order unless expressly agreed in the Order or otherwise agreed in writing.

3.3 Minimum order quantities, where necessary, will be applied at the Company’s discretion. A minimum order value of £500 (or equivalent) applies, unless otherwise agreed. For

small parts, quantities stated to be delivered are approximate, and the Order will be deemed fulfilled provided not less than 95% of the specified quantity is delivered.

3.4 The Customer shall satisfy itself that the Goods or Services are suitable for the Customer’s use or application. The Customer shall be solely responsible for the accuracy of the Customer’s designs, drawings, specifications and other data supplied to the Company by the Customer or the Customer’s employees or agents and in conformity with which the Company is to manufacture the Goods or perform the Services (even if the Company examines, inspects, studies or comments to the Customer upon any such designs, drawings, specifications or other data).

4 Delivery and Acceptance

4.1 Unless the Company agrees in writing to arrange transport, the Customer shall at its own expense and risk deliver any Tooling, ‘free issue’ material or Customer Equipment specified in the Order to the Company’s premises for the supply or provision of the Goods and/or Services.

4.2 The Company will arrange for the Carrier to transport the Goods and Serviced Customer Equipment at the Customer’s risk and cost. Unless otherwise agreed in writing by the Company, delivery of the Goods or any Serviced Customer Equipment shall take place on delivery to the Carrier.

4.3 Any dates specified by the Company for delivery of the Goods or any Serviced Customer Equipment or for the provision of the Services are intended to be an estimate only and time for delivery shall not be of the essence. The Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or Serviced Customer Equipment nor the performance of the Services (even if caused by the Company’s negligence), nor will any delay entitle the Customer to terminate or rescind the Order.

4.4 If for any reason the Customer does not accept delivery of any of the Goods or Serviced Customer Equipment when they are ready for delivery, or the Company is unable to deliver such Goods or Serviced Customer Equipment on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, then such Goods or Serviced Customer Equipment will be deemed to have been delivered, risk passing to the Customer, and the Company may at its option:

- (a) store such Goods or Serviced Customer Equipment until actual delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance); or
- (b) after giving the Customer not less than thirty (30) days prior written notice, reallocate or sell such Goods or sell such Serviced Customer Equipment at the best price readily obtainable and (after deduction of all reasonable survey, repair, storage and selling expenses) charge the Customer for any shortfall below the Order price or account to the Customer for any excess.

4.5 The Customer is responsible for promptly advising the Carrier of any damage to or loss from or non-delivery of any consignment of Goods or Serviced Customer Equipment if transportation has been arranged by or on behalf of the Customer, and the Company will not be liable for any such damage, loss or non-delivery.

If transportation has been arranged by the Company on its own behalf, the liability of the Company for damage to or loss from or non-delivery of the Goods or Serviced Customer Equipment shall be limited to, at the Company’s option and within a reasonable time: issuing a credit note against any invoice raised, reimbursing the Customer with the proceeds of any transit or other insurance, or, in the case of Goods, replacing them.

4.6 The Customer may arrange for testing and inspection of the Goods at the Company’s premises before shipment. The Company shall have no liability for any claim which is made after shipment in respect of any defect in the Goods which would have been apparent on inspection if the Customer has conducted such inspection.

4.7 The Company shall be entitled at its discretion to make delivery of the Goods or Serviced Customer Equipment by instalments and to invoice the Customer for each instalment individually. Where the Goods or Serviced Customer Equipment are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Order as a whole as repudiated or to refuse to accept subsequent instalments.

4.8 The quantity of any consignment of Goods or Serviced Customer Equipment as recorded by the Company upon despatch from the Company’s place of business shall be deemed conclusive evidence of the quantity received by the Customer on delivery unless the Customer can prove otherwise.

4.9 The Customer will be deemed to have accepted the Goods as being in accordance with the Order unless:

- (a) Within 14 days of the date of delivery of the Goods, the Customer notifies the Company in writing of any failure of the Goods to conform with the Order (which would be apparent upon reasonable inspection and testing of the Goods within 14 days); or
- (b) The Customer notifies the Company in writing of any failure of the Goods to conform with the Order within a reasonable time where the defect or failure would not be so apparent within 14 days of the date of delivery,

failing which the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Order.

4.10 Goods or Serviced Customer Equipment, once delivered, may not be returned unless their return is agreed in advance in writing by the Company, and subject to the following conditions:

- (a) Goods or Serviced Customer Equipment are returned in an unused condition with appropriate packaging;

<p>(b) Returns are made within 3 weeks of delivery of those Goods or Serviced Customer Equipment, all transport and other re-delivery costs paid by the Customer; and</p> <p>(c) Returned Goods or Serviced Customer Equipment shall be accompanied by a written record of invoice number, date and a note of reasons for their return.</p> <p>5 <u>Passing of Risk and Title in Goods</u></p> <p>5.1 The risk in Goods and Serviced Customer Equipment shall pass to the Customer on delivery in accordance with Condition 4.2.</p> <p>5.2 Full legal, beneficial and equitable title to and property in the Goods shall remain vested in the Company (even though they have been delivered and risk has passed to the Customer) until:</p> <p>(a) payment in full, in cash or cleared funds, for all the Goods has been received by the Company; and</p> <p>(b) all other money payable by the Customer to the Company on any other account or under the Order or any other contract or order has been received by the Company.</p> <p>5.3 Until full legal, beneficial and equitable title to and property in the Goods passes to the Customer:</p> <p>(a) the Customer shall hold the Goods on a fiduciary basis as the Company's bailee and shall store the Goods at its premises, insure them without any charge to the Company, and keep them clearly identifiable as belonging to the Company;</p> <p>(b) the Company may, on demand and without prior notice, repossess and resell the Goods if any of the events specified in Condition 13 occurs or if any sum due to the Company from the Customer is not paid when due and for this purpose, the Company, its employees, agents and sub-contractors will be entitled to unrestricted access to any premises where any of the Goods are situated;</p> <p>(c) the Company hereby authorises the Customer to use and/or sell the Goods in the normal course of the Customer's business and to pass good title in the Goods to its customers, if they are purchasers in good faith without notice of the Company's rights. This right shall automatically cease on the occurrence of any event set out in Condition 13 and/or if any sum owed to the Company by the Customer is not paid when due. If the Customer sells the Goods prior to paying the full price thereof the Customer shall hold the proceeds of sale on trust for the Company.</p> <p>5.4 The Company's rights and remedies set out in this Condition 5 are in addition to and shall not in any way prejudice, limit or restrict any of the Company's other rights or remedies under the Order or in law or equity. The Company shall be entitled to maintain an action against the Customer for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to the Customer.</p> <p>6 <u>Provision of Services at Customer Premises</u></p> <p>6.1 Where the Company is to perform Services at the Customer's premises, the Customer shall procure safe access to the premises and the provision of adequate power, lighting, heating and other such facilities or supplies for the Company's employees or agents in accordance with the demands of any applicable legislation and as the Company shall reasonably require.</p> <p>6.2 The Services will be deemed to be completed and the relevant element of the Order price to be due and payable forthwith</p> <p>(a) when the Company issues a written notice to the Customer confirming such completion; or</p> <p>(b) if the Company is available to perform the Services but is prevented from doing so by reason of:</p> <p>(i) the lack of relevant assistance from the Customer (such as lack of availability of test components or parts from the Customer); and/or</p> <p>(ii) the condition of the Customer's premises on the site at which the Services are to be provided and/or the facilities or services available at the time agreed for the provision of the Services.</p> <p>7 <u>Order Price</u></p> <p>7.1 Subject to the other provisions of this Condition 7, the price charged in respect of Goods delivered or Services provided shall be the price that is current at the date of despatch for the Goods and/or provision of Services by the Company.</p> <p>7.2 The Company shall give the Customer an estimate of the price of any Services within a reasonable time and shall not normally proceed to perform such Services until the Customer has confirmed its agreement to such price, except that, if Repair Services are requested on an emergency basis, or with expedited turn-around time, the Company will be deemed to be authorised to proceed with such Services if the estimated price for the Repair Services is less than 50% of the price of replacement Goods, unless the Customer specifically states otherwise.</p> <p>7.3 The prices given by the Company to the Customer in any price list or quotation are believed to be accurate, however, the Company reserves the right to correct, where necessary, any errors before a purchase order from the Customer is accepted.</p> <p>7.4 Any quotation or estimate made by the Company is given subject to these Conditions. Without prejudice to the Company's right not to accept an order, quotations will be valid for 14 days from date of issue.</p> <p>7.5 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any increase in the costs of labour, materials, or other costs of manufacture or supply), any change in the quantities of the Goods requested by the Customer, any change in the delivery dates of the Goods or Services requested by the Customer, or any delay or cost caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.</p>	<p>7.6</p> <p>8</p> <p>8.1</p> <p>8.2</p> <p>8.3</p> <p>8.4</p> <p>8.5</p> <p>8.6</p> <p>8.7</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(i)</p> <p>(ii)</p> <p>(iii)</p> <p>9</p> <p>9.1</p> <p>(a)</p> <p>(i)</p> <p>(ii)</p> <p>(iii)</p> <p>(b)</p> <p>9.2</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>9.3</p> <p>(a)</p>	<p>Unless otherwise agreed in writing, the price for the Goods and/or Services shall be exclusive of any value added tax or other similar taxes or levies and all costs or charges in relation to packaging (other than standard packaging), loading, unloading, carriage, freight and insurance all of which amounts the Customer will pay, where appropriate, in addition when it is due to pay for the Goods and/or Services.</p> <p>8 <u>Payment Terms</u></p> <p>8.1 The Company reserves the right to revise payment terms at any time without notice and to request guarantees, security, stage payments or cash in advance for the Goods or Services. The Company may, at its discretion, and without giving a reason, refuse or limit deferred payment terms to any Customer. The Company may agree to accept payment for the Goods or Services by credit card provided that the Customer shall in addition to the price of the Goods or Services pay any charge levied by the credit card company in respect of such transaction.</p> <p>8.2 Payment of the price for the Goods and/or Services is due 30 days after the date of the Company's invoice. It is the Customer's responsibility to pay the business unit of the Company which issued the invoice the Customer wishes to settle, and payments made to any other business unit of the Company shall not be accepted in settlement of an invoice of the issuing business unit.</p> <p>8.3 Time for payment shall be of the essence.</p> <p>8.4 No payment shall be deemed to have been received until the relevant business unit of the Company has received the full amount in cleared funds.</p> <p>8.5 Notwithstanding any other provision, all payments payable to the Company under the Order shall become due immediately upon termination of this Order for whatever reason.</p> <p>8.6 The Customer shall make all payments due under the Order without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise.</p> <p>8.7 If any sum due from the Customer to the Company under the Order or any other order is not paid to the business unit of the Company which issued the invoice under which the relevant sum is due in accordance with Condition 8.2 on or before the due date for payment, then all sums then owing by the Customer to the Company or any Affiliate of the Company shall become due and payable immediately and, without prejudice to any other right or remedy available to the Company, the Company and its Affiliates shall be entitled to:</p> <p>(a) cancel or suspend performance of the Order or any other order placed with the Company or its Affiliates including suspending deliveries of the Goods and suspending delivery of any other goods to the Customer and suspending provision of the Services or other services until arrangements as to payment or credit have been established which are satisfactory to the Company and the time for performance of the Order shall be extended accordingly;</p> <p>(b) appropriate any payment made by the Customer to such of the Goods or such of the Services (or any goods or services supplied under any other order between the Customer and the Company or its Affiliates) or as the Company may think fit;</p> <p>(c) require the Customer to pay for Goods prior to their despatch or collection from the Company's place of business;</p> <p>(d) charge the Customer:</p> <p>(i) interest calculated on a daily basis on all overdue amounts (both before and after judgment) until actual payment at the rate of four per cent (4%) per annum above the official dealing rate of the Bank of England prevailing from time to time until payment is made in full;</p> <p>(ii) reasonable debt recovery costs as set out in the Late Payment of Commercial Debts (Interest) Act 1998; and</p> <p>(iii) the cost of obtaining judgment or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.</p> <p>9 <u>Warranty</u></p> <p>9.1 The Company warrants that subject to the other provisions of this Condition 9:</p> <p>(a) the Goods will be free from defects due to:</p> <p>(i) faulty materials;</p> <p>(ii) faulty workmanship; or</p> <p>(iii) faulty design on the part of the Company (and/or the Company's suppliers if selected by the Company); and</p> <p>(b) the Services will be performed with reasonable care and skill.</p> <p>9.2 If the Customer establishes to the Company's reasonable satisfaction that there has been a breach of the Warranty, then the Company shall at its option and within a reasonable time:</p> <p>(a) repair or make good such defect or failure in such Goods or re-perform such Services free of charge to the Customer (including all reasonable packing and transportation costs);</p> <p>(b) replace such Goods with Goods which are in all respects in accordance with the Order (and also pay all reasonable packing and transportation costs); or</p> <p>(c) issue a credit note to the Customer in respect of the whole or part of the Order price of such Goods or Services as appropriate, having taken back such Goods or materials relating to such Services</p> <p>subject, in every case, to the remaining provisions of this Condition 9 provided that the liability of the Company under this Condition 9 shall in no event exceed the purchase price of such Goods or Services and performance of any one of the above options shall constitute an entire discharge of the Company's liability under the Warranty.</p> <p>9.3 Condition 9.2 shall not apply unless the Customer:</p> <p>(a) notifies the Company in writing of the alleged defect or breach of Warranty within ninety (90) days of the time when the Customer discovers or ought reasonably to have discovered the defect and in any event within ninety</p>
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(90) days of the end of the warranty period set out in Condition 9.5, and supplies all the information shown on the Company's Warranty claim form; and

(b) affords the Company a reasonable opportunity to inspect the relevant Goods or Serviced Customer Equipment and, if so requested by the Company and where it is reasonable to do so:

(i) returns to the Company or such other person nominated by the Company carriage paid by the Customer, within 14 days of the date of the notice in Condition 9.3 (a), the Goods or Serviced Customer Equipment correctly identified and packed, for inspection, examination and testing; and/or

(ii) permits the Company to have access to the Goods or Serviced Customer Equipment at the Customer's premises or other location where they may be or the Services were performed, for such purposes.

9.4 If on inspection the Company determines that there has been no breach of the Warranty, the Customer shall pay the Company's costs incurred in inspecting, survey, stripping down, re-assembly, packing and transportation.

9.5 If the Company elects to replace the Goods or re-perform the Services pursuant to Condition 9.2, the Company shall deliver the replacement Goods to or re-perform the Services for the Customer at the Company's own expense and the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in the Customer) re-vest in the Company. The Customer shall make any arrangements as may be necessary to deliver up the defective Goods to the Company.

9.6 The Warranty shall remain in force in respect of Goods for a period of twelve (12) calendar months from the date of delivery to the Customer and in respect of Serviced Customer Equipment for a period of six (6) calendar months from the date of delivery to the Customer. Where Goods or Customer Equipment are repaired or replaced pursuant to Condition 9.2, then Condition 9.2 continues to apply to the repaired or replaced Goods or Customer Equipment for the remaining balance of the original warranty period under this Condition 9.6.

9.7 The Company shall not be liable under the Warranty:

(a) in respect of any defect arising from fair wear and tear, wilful or accidental damage, negligence of the Customer or its employees or agents, abnormal working conditions or harsh environment, the Goods being used, handled, stored, maintained and operated otherwise than in accordance with sound industry practice or the Company's instructions (whether oral or in writing), misuse or alteration of the Goods without the Company's approval, repair other than in accordance with the Company's approved procedures, experimental running, or a type of operation or use outside that for which the Goods were designed, or

(b) in respect of Goods from which the Company's trade mark or serial number has been altered, removed or obliterated;

(c) due to any modification or alteration being required to be made by an authoritative authority after delivery of the Goods or performance of the Services;

(d) until the total price for the Goods or Services, and any other goods or services supplied by the Company and its Affiliates, has been received in the correct amount in cleared funds;

(e) for any Goods not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company to the extent that they are assignable by the Company to the Customer;

(f) for any Goods manufactured or appropriated to the Order in accordance with any design, specification, instruction or recommendation made to the Company by the Customer or for any Services provided in accordance with specifications, instructions or recommendations issued by the Customer;

(g) in respect of tyres, flexible hoses, seals, igniter plugs and other consumables;

(h) in respect of Goods with a stated shelf life or 'use by' date, if such shelf life has expired, or 'use by' date has passed;

(i) in respect of any type of defect, damage or wear specifically excluded by the Company by notice in writing;

(j) if the Customer makes any further use of the Goods after giving notice in accordance with Condition 9.3; or

(k) if component parts not authorised by the Company are used by the Customer in the Goods. Using such unauthorised parts will nullify the Warranty for all the Goods and any associated goods.

9.8 The Warranty is the only warranty which shall be given by the Company in respect of the Goods or Services and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Order. This includes without limitation any warranty, condition or other term that implies the fitness for purpose of the Goods or Serviced Customer Equipment.

10 Exclusion and Limitation of Liability

10.1 These Conditions set out the entire liability of the Company (including any liability for the acts or omissions of its sub-contractors) in respect of any breach of these Conditions or the Order and any representation, statement or tortious act or omission including negligence arising under or in connection with the Order.

10.2 Nothing in these Conditions shall exclude or limit the Company's liability for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation or for any liability that cannot legally be excluded or limited.

10.3 THE COMPANY SHALL NOT BE LIABLE FOR ANY ECONOMIC LOSS OF WHATEVER NATURE (WHETHER OR NOT SUCH LOSS OR DAMAGE WAS FORESEEN, DIRECT, FORESEEABLE, KNOWN OR OTHERWISE), INCLUDING LOSS OF ANTICIPATED PROFITS, LOSS OF ACTUAL PROFITS (DIRECT OR INDIRECT), LOSS OF ANTICIPATED SAVINGS, LOSS OF

BUSINESS, OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED OR ANY LOSSES ARISING AS A RESULT OF ANY THIRD PARTY BRINGING A CLAIM IN RESPECT OF ANY NATURE WHATSOEVER.

10.4 SUBJECT TO CONDITION 10.2 ABOVE AND WITHOUT PREJUDICE TO CONDITION 10.3 ABOVE THE TOTAL AGGREGATE LIABILITY OF THE COMPANY ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE ORDER WHETHER FOR NEGLIGENCE OR BREACH OF CONTRACT OR ANY CAUSE WHATSOEVER SHALL IN NO EVENT EXCEED THE PRICE PAID BY THE CUSTOMER FOR THE GOODS OR SERVICES GIVING RISE TO THE CUSTOMER'S CLAIM. NOTWITHSTANDING ANY OTHER PROVISION OF THESE CONDITIONS OR ANY PROVISION OF THE ORDER, THE COMPANY SHALL HAVE NO LIABILITY FOR THE USE BY THE CUSTOMER OF COMPONENT PARTS IN THE GOODS WHICH ARE NOT MANUFACTURED BY OR AUTHORISED BY THE COMPANY.

10.5 The price of the Goods and/or Services has been calculated on the basis that the Company will exclude or limit its liability as set out in these Conditions and the Customer by placing an order agrees and warrants that the Customer shall insure against or bear itself any loss for which the Company has excluded or limited its liability in these Conditions and the Company shall have no further liability to the Customer.

11 Subcontracting, Assignment and Third Party Rights

11.1 The Customer shall not be entitled to assign, charge, subcontract or transfer the Order or any part of it without the prior written consent of the Company.

11.2 The Company may assign, charge, subcontract or transfer the Order or any part of it to any person, including its Affiliate companies, without the consent of the Customer.

11.3 Other than affiliates of the Company, a person who is not a party to the Order (including without limitation any employee, officer, agent, representative or sub contractor of either party) shall not have any right to enforce any term of the Order which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Company and the Customer.

11.4 Without prejudice to the intention of the parties to give no rights to the third parties under the Order, any term of the Order can be varied and the Order can be cancelled or terminated without the consent of any third party who might benefit from its terms or have enforceable rights under the Order.

12 Force Majeure

12.1 The Company reserves the right to defer the date of delivery or to cancel the Order or reduce the volume of the Goods or Services ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business and its obligations under the Order due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers, or refusal or delay of governments or other authorities to grant export or other licences, or events beyond the control of its suppliers or subcontractors, or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event of force majeure continues for a continuous period in excess of 3 months, the Company may terminate the Order without liability by giving written notice to the Customer.

12.2 If the Company is unable to supply all of the Goods to the Customer due to an event of force majeure as set out in Condition 12.1 above, the Company shall have the right to allocate its available supply among its customers as deemed appropriate by the Company in the circumstances.

13 Order Cancellation, Breach of Contract and Insolvency

13.1 The Customer may only cancel an Order (or any part of an Order) which the Company has already accepted with the Company's prior agreement in writing and provided that the Customer gives the Company prior written notice to that effect and reimburses the Company in accordance with Condition 13.4.

13.2 The Company may, as it thinks fit, (without prejudice to any other rights or remedies it may have against the Customer) immediately suspend further performance of the Order or cancel any outstanding provision of the Services or delivery of the Goods or stop any Goods in transit or by notice in writing to the Customer terminate the Order without liability to the Company if:

(a) the Customer commits a breach of any of its obligations under the Order and, (except as to payment) if it is capable of remedy, fails to remedy such breach, or persists in any breach of any of its obligations under the Order after having been requested in writing by the Company to remedy or desist from such breach, within a period of 14 days;

(b) any sum payable under the Order is not paid in accordance with the Order;

(c) any distress execution or diligence is levied upon any of the Customer's goods or property and is not paid out within 7 days or it being levied;

(d) the Customer (being a partnership) or the Customer's partner offers to make any arrangements with or for the benefit of the creditors of the Customer or the Customer's partner generally or there is presented in relation to the Customer or the Customer's partner a petition of bankruptcy;

(e) the Customer (being a limited company) is deemed to be unable to pay its debts under applicable insolvency legislation (including, without limitation, section 123 of the Insolvency Act 1986) or the Customer calls a meeting for the purpose of passing a resolution to wind up its company or such a resolution is passed or the Customer presents or has presented a petition to wind up or presents or has presented a petition to appoint an administrator or has an administrative receiver or receiver appointed to the whole or any part of the Customer's business, undertaking, property or assets;

(f) the Customer suffers or undergoes any procedure analogous to any of those specified in Clause 13(c) to (e) inclusive above or any other procedure available in the country in which the Customer is constituted, established or domiciled against or to an insolvent debtor or available to the creditors of such a debtor;

- (g) the Customer ceases, or threatens to cease, to carry on business; or
- (h) the Company reasonably believes that any of the events specified in Condition 13.2 (a) to (g) above is about to occur in relation to the Customer.
- 13.3 Notwithstanding any such termination or suspension in accordance with Conditions 12 or 13.2 above the Customer shall pay the Company at the Order rate for all Goods delivered or Services provided up to and including the date of suspension or termination and in the case of suspension in Condition 12 above may also levy a reasonable cancellation charge for any Goods that the Customer has ordered which are in the process of being manufactured or are awaiting delivery to the Customer.
- 13.4 If either the Customer wishes to cancel an Order (or any part of an Order) which the Company has already accepted and gives the Company written notice to that effect in accordance with Condition 13.1 or if the Company terminates the Order in accordance with Condition 13.2 and gives the Customer written notice to that effect, the Company shall send to the Customer a written statement setting out details of:
- (a) the amounts due in respect of any work in progress on a quantum meruit basis;
- (b) any costs, reasonably and properly payable by the Company as a result of the cancellation to its subcontractors engaged to supply all or any part of the Goods or the Services prior to the date of the cancellation of the Order by the Customer;
- (c) any costs reasonably and properly incurred by the Company in writing off equipment or items used exclusively in supplying the whole or any part of the Goods or the Services up to the date of the cancellation of the Order by the Customer which shall not be greater than the net book value of the equipment or items at the time in question;
- (d) any other reasonable and proper costs incurred by or losses, damages or claims suffered by the Company or to be incurred or suffered solely in connection with or resulting from the termination or cancellation of the Order whether arising under statute, contract or at common law including without limitation overheads, non-recoverable design costs and the profit the Company would have earned under the Order; and
- the Customer shall, within thirty (30) days from receiving such statement, pay to the Company the amounts set out in such statement.
- 13.5 The termination of the Order or any purchase order for whatever reason shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any sums owing or to become owing to the other.
- 14 Care and Use of the Customer's Property**
- 14.1 Title to and property in the Customer's Property shall at no time pass to the Company unless the Customer specifically agrees otherwise in writing.
- 14.2 Risk in the Customer's Property shall pass to the Company on delivery to the Company and remain with the Company at all times whilst in the Company's possession or control.
- 14.3 It shall be the Customer's responsibility to ensure that any Tooling, 'free issue' material and Customer Equipment delivered to the Company by the Customer or on its behalf is safe and suitable for manufacture of or incorporation into Goods, or for the Repair Services to be performed in accordance with all regulatory guidelines and procedures.
- 14.4 The Company shall use the Customer's Property solely for the purpose of the Order and shall at the Customer's expense maintain the Customer's Property in good order, condition and repair whilst it is in the Company's possession or control.
- 14.5 On completion or termination of the Order, unless otherwise directed by the Customer in writing, the Company shall return the Customer's Property to the Customer. If the Customer does not collect or accept delivery of such Customer's Property, the Company may, after giving not less than thirty (30) days' prior written notice, sell such Customer's Property at the best price readily available and account to the Customer for any excess after deduction of all reasonable storage and selling expenses.
- 14.6 Without prejudice to any other rights and remedies which the Company may have under the Order, the Company shall, in respect of all debts owed by the Customer to the Company, have a general lien on any of the Customer's Property in the Company's possession and the Company shall be entitled after 30 days' prior written notice to the Customer to dispose of such of the Customer's Property as the Company thinks fit and to apply any proceeds of sale towards the payment of such debts.
- 15 Export Terms**
- 15.1 Where the Goods are supplied for export from the United Kingdom or the Customer's principal place of business is outside of the United Kingdom, the provisions of this Condition 15 shall apply notwithstanding any other provision of these Conditions.
- 15.2 The Customer shall be responsible for complying with any legislation or regulations governing the importation, use or sale of the Goods in the country of destination, the payment of any duties or taxes on them, the transportation and storage of Goods, and complying with any obligation to translate any instructions, labelling or packaging into any other language.
- 15.3 Where the Company specifies that payment will be made by letter of credit, the Customer must establish and maintain in favour of the Company an irrevocable and unconditional letter of credit in a form satisfactory to the Company and issued or confirmed by a bank in England which is acceptable to the Company. No delivery of Goods or performance of the Services will take place until such a letter of credit has been issued and where appropriate confirmed and the Company is satisfied with all related arrangements. If for any reason payment is due under any letter of credit established for that purpose but not made the Customer shall nevertheless remain liable to pay for the Goods or Services.
- 15.4 The information which the Company and Customer disclose, and Goods or Customer's Property which the Company and Customer deliver to each other pursuant to the Order, may be subject to the provisions of the trade compliance regulations (including export and import regulations) of various countries. The Company and Customer acknowledge that licenses from the applicable regulatory agency may be required before they may disclose or deliver such information and/or Goods or Customer Property hereunder, and that such licenses may impose further restrictions on use and further disclosure of such information and/or Goods or Customer Property. The Company and Customer agree to comply with all applicable governmental regulations as they relate to the import, export and re-export of information and/or Goods or Customer Property under the Order and
- shall each indemnify and hold the other harmless to the full extent of any loss, damage or expense, excluding lost profits, for any failure of the other to comply with such laws and regulations
- 15.5 The Company shall not be liable for delays or refusals in the granting of export licences or the suspension or revocation thereof, nor for changes in export classification, delays in export or re-export resulting from the Customer's failure to deliver requested end-user information in good time, or any other delay or refusal by governments or other authorities to grant necessary licences or approvals.
- 15.6 If Goods or Serviced Customer Equipment are to be sent by sea transit, the Company shall be under no obligation to give notice to insure and shall have no liability for loss or damage in the event the Customer is uninsured.
- 16 Exhibitions**
- 16.1 The Customer agrees that it will not exhibit the Company's Goods, advertisements or price lists relating to any of the Company's Goods or Services without the written consent of the Company.
- 17 Notices**
- 17.1 Any notice given under this Order shall be in writing and delivered by first class, special delivery or international registered post to the address of the party specified in the Order, or such other address as is notified to the other party from time to time.
- 18 General**
- 18.1 Any intellectual property rights (including, without limitation, patents, registered and unregistered designs, trade marks and service marks (registered or not) and copyright and any applications for them) in the Goods or Services or in any moulds, tools, designs, drawings, or production data owned by the Company or created by the Company in the course of the performance of the Order or otherwise used in the manufacture of the Goods or the provision of the Services shall remain the Company's property unless otherwise expressly agreed by the Company. The Company grants, on full payment for the Goods, the non-exclusive right for the Customer and bona fide purchasers from the Customer to use, for the operation of the Goods for their intended purpose only, (a) any software supplied with, or embedded in, the Goods, and (b) technical manuals and instructions relating to operation and maintenance of the Goods. The Customer hereby grants to the Company a non-assignable non-exclusive royalty-free licence to use any intellectual property rights (including, without limitation, patents, registered and unregistered designs, trade marks and service marks (registered or not) and copyright and any applications for them) owned by the Customer to the extent necessary for the Company to supply the whole or any part of the Goods or the Services in accordance with the Order. Except as expressly stated in this Condition 18.1, nothing in the Order shall be deemed to have given the Customer a licence or any other right to use any of the intellectual property rights of the Company unless otherwise expressly agreed by the Company.
- 18.2 Nothing in the Order shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.
- 18.3 The rights and remedies of the Company in respect of the Order shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by the Company nor by any failure of, or delay by the Company in ascertaining or exercising any such rights or remedies. The waiver by the Company of any breach of the Order shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 18.4 If at any time any one or more of the Conditions of the Order (or any sub-Condition or paragraph or any part of one or more of these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Order and the validity and/or enforceability of the remaining provisions of the Order shall not in any way be affected or impaired as a result of that omission.
- 18.5 The Order sets out the entire agreement and understanding between the Customer and the Company in connection with the sale of the Goods and provision of the Services and shall supersede and replace all documentation previously issued by the Company or the Customer. In case of conflict, agreed terms appearing on the face of the Order shall take precedence over these Conditions, and these Conditions take precedence over any other documents referred to in the Order.
- 18.6 The Customer shall each keep confidential and shall not, without the prior written consent of the Company, disclose to any third party or otherwise make public the terms or existence of the Order or any other confidential or sensitive information of the Company.
- 19 Law and Jurisdiction**
- 19.1 The Order and any dispute or claim arising out of or in connection with it shall be governed by and be construed in all respects in accordance with English law.
- 19.2 Subject to Condition 19.3, all disputes or claims arising out of or relating to the Order shall:
- (a) in the case of a customer incorporated or having its principal place of business in the UK, be subject to the exclusive jurisdiction of the English courts to which the parties irrevocably submit and each of the parties hereby unconditionally and irrevocably waives its right to rely on the jurisdiction of any other court; and
- (b) in the case of a customer incorporated or having its principal place of business outside the UK, be subject to final and binding arbitration in London by one arbitrator under the rules of the London Court of International Arbitration.
- 19.3 The Company shall be entitled in its sole discretion to commence proceedings against the Customer in any other court which would be competent to exercise jurisdiction over the Customer.
- October 2008**