

## Viessmann Refrigeration Systems UK Limited (VRS Ltd.) General terms and conditions (March 2024)

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These terms and conditions cover the following scopes of work (all definitions are as defined below):

1. *Ex Works Order.*
2. *Customer Delivery.*
3. *Delivery with Installation (this scope is in respect of cold room fabric only).*
4. *Delivery with Installation and Turnkey (this scope is in respect of cold room fabric and refrigeration equipment).*

The Customer's attention is particularly drawn to the provisions of clause 11 (Limitation of liability), clause 6 (Title and Risk), clause 8 (Customer's Obligations) and clause 12 (termination).

### 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.

**Commencement Date:** has the meaning given in clause 2.2 .

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 16.8.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods or Services or Goods and Services, in accordance with these Conditions.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be interpreted accordingly.

**Customer:** the person or firm who purchases the Goods or Services or Goods and Services from the Supplier.

**Customer Delivery:** delivery of the Goods by the Supplier (or any contractor or sub-contractor of the Supplier) to the Customer at an agreed drop off point pursuant to the relevant Delivery Location. Only the terms relating to the supply of Goods within these terms and conditions are applicable.

**Deliverables:** any output of the Services to be provided by the Supplier to the Customer and, any other documents, products and materials provided by the Supplier to the Customer, in relation to the Services.

**Delivery Location:** the delivery location specified in the Order, but for the avoidance of doubt:

- (a) for an Ex Works Order, the delivery location will be the Supplier's premises (or the premises of a member of the Supplier's Group) as agreed by the parties or such other location as may be agreed prior to delivery.
- (b) for a Customer Delivery, the delivery of the Goods is to be to an agreed drop off point in an internal or external area with clear access, at the Customer's premises.
- (c) for any of the Delivery Options, the delivery will be to an agreed internal location at the Customer premises.

**Delivery Options:** this includes 1) Customer Delivery, 2) Delivery with Installation and 3) Delivery with Installation and Turnkey. All deliveries will be made on Business Days between 8.00am and 5.00pm.

**Delivery Option Order:** this includes 1) Customer Delivery, 2) Delivery with Installation and 3) Delivery with Installation and Turnkey.

**Delivery with Installation:** this option is in respect of cold room fabric only and is delivery of the Goods by the Supplier (or any contractor, sub-contractor or otherwise of the Supplier) to the Customer at a drop off point pursuant to the relevant Delivery Location and installation of the cold room fabric into an agreed final position. The terms relating to the supply of Goods and the supply of Services within these terms and conditions are applicable.

**Delivery with Installation and Turnkey:** this option is in respect of cold room fabric and refrigeration equipment and is delivery of the Goods by the Supplier (or any contractor, sub-contractor or otherwise of the Supplier) to the Customer at a drop off point pursuant to the relevant Delivery Location and installation of the cold room fabric into an agreed final position. In addition, the refrigeration plant will be installed and commissioned ready for use. The terms relating to the supply of Goods and the supply of Services within these terms and conditions are applicable.

**Ex Works Order:** an order placed by the Customer whereby the Customer agrees to collect the Goods from the Delivery Location. Only the terms relating to the supply of Goods within these terms and conditions are applicable.

**Force Majeure Event:** has the meaning given to it in clause 15 .

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

**Group:** in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.

**Incoterms® Rules:** the set of internationally recognised rules which define the responsibilities of the parties in an export transaction, as established and maintained by the International Chamber of Commerce (ICC). Please note that use of the Incoterms® trade mark does not imply association with, approval of or sponsorship by the ICC.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the supply of Goods or Services or Goods and Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, as the case may be.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer.

**Spare Parts:** this means any Goods which are non-bespoke articles (i.e. "off the shelf").

**Supplier:** Viessmann Refrigeration Systems Limited registered in England and Wales with company number 03607457.

**Supplier Materials:** has the meaning given in clause 8.1.9 .

**Warranty Period:** has the meaning given in clause 5.1.

Interpretation:

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its personal representatives, successors and permitted assigns.

A reference to legislation or a legislative provision is a reference to it as amended or reenacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** excludes fax but not email.

## **2. BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.

2.4 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 law, trade custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

## **3. GOODS**

3.1 The Goods are described in the Goods Specification.

3.2 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

## **4. DELIVERY OF GOODS**

4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order and the factory order confirmation number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 For a Delivery Option Order, the Supplier shall deliver and unload the Goods to the Delivery Location, as specified and agreed in the Order, or such other location as the parties may agree at any time after the Supplier notifies the Customer that the Goods are ready. The Customer is responsible for ensuring that the Supplier has clear access to the Delivery Location and that such access is available for use without expense. The Supplier reserves the right to pass on any such costs suffered or incurred as a result of or connected to obtaining access to the Delivery Location, to the Customer.

4.3 For an Ex Works Order, the Customer shall collect the Goods from the Delivery Location within five Business Days of the Supplier notifying the Customer that the Goods are ready.

4.4 In each case, delivery of the Goods shall be completed on the completion of the unloading/loading (as applicable) of the Goods at the applicable Delivery Location.

4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

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 of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's 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/accept (as applicable) delivery of the Goods within 5 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 by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the 5th 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 actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.8 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 OF GOODS

5.1 The Supplier warrants that, subject to clause 5.3 and unless otherwise specified and authorised by the Supplier, on delivery, and for a period of:

5.1.1 5 years in respect of any panel manufacturing defect where the Supplier has, pursuant to a Delivery with Installation or Delivery with Installation and Turnkey scope of work, supplied an insulated cold room; and

5.1.2 12 months in respect of any other Goods manufactured or supplied by the Supplier, in each case, from the date of delivery (Warranty Period), the Goods shall:

- (a) conform in all material respects with the Goods Specification; and
- (b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3 , if:

5.2.1 the Customer gives notice in writing (to include the equipment model, the serial number and, if applicable, the date of installation) 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 warranty set out in clause 5.1 ;

5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by the Supplier) sends good quality photos of the Goods to the Supplier for initial review and inspection, engages in a video call(s) with the Supplier for the Supplier to inspect the Goods and provides the Supplier with access to the Goods for inspection, the Supplier shall, at its option, repair or replace the defective Goods (or parts) on a Business Day between 8.00am and 5.00pm, or refund the price of the defective Goods (or parts) in part or full.

5.3 If, under clause 5.2 the Supplier opts to repair the Goods under the warranty, the repairs will only be carried out after the Customer has confirmed that the Goods are in the position of operation or are in a suitable location on the Customer's premises with full access.

5.4 The Supplier shall not be liable for the Goods'; failure to comply with the warranty set out in clause 5.1 if:

5.4.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2 and being told not to continue to use the Goods;

5.4.2 the Customer allows anyone who is not authorised by the Supplier to perform or effect repairs or adjustments to the Goods;

5.4.3 the Customer uses or installs the Goods in a way which exceeds its design envelope or operates the Goods at control parameters other than those provided as standard factory settings;

5.4.4 the Customer fails to observe commonly accepted industry operating standard practices;

5.4.5 the defect arises because the Customer failed to follow the Supplier's oral or written instructions (operating instructions are supplied with all Goods but are also available on request to the Supplier) as to the storage, commissioning, installation, use, cleaning or maintenance of the Goods or (if there are none) good trade practice regarding the same;

5.4.6 the defect arises as a result of the Supplier following any drawing, design or specification supplied and/or agreed by the Customer;

5.4.7 the Customer alters or repairs such Goods without the written consent of the Supplier;

5.4.8 the Customer repairs the Goods using spare parts or replacement items not supplied or pre-authorised by the Supplier; or

5.4.9 the defect arises as a result of accidental damage, fair wear and tear, wilful damage, negligence, or abnormal working conditions.

5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods'; failure to comply with the warranty set out in clause 5.1 .

5.6 The Supplier reserves the right to charge the Customer additional charges (such as travel time and call out charges), if, on inspection by the Supplier (and any contractor or sub-contractor or otherwise) no fault is found with the Goods, the fault does not fall under the warranty pursuant to the Contract or access is restricted or denied to the Supplier (and any contractor or sub-contractor or otherwise).

5.7 The warranty offered under this clause 5 is non-transferrable and is to be in the name of the Customer.

## **6. TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery or collection (as applicable).

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

6.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods; and

6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4 .

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

6.3.1 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods (if applicable);

6.3.2 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

6.3.3 notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.3.2 or clause 12.3.3 ; and

6.3.4 give the Supplier such information as the Supplier may reasonably require from time to time relating to:

(a) the Goods; and

(b) the ongoing financial position of the Customer.

6.4 Subject to clause 6.5 , the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

6.4.1 it does so as principal and not as the Supplier's agent; and

6.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 At any time before title to the Goods passes to the Customer, the Supplier may:

6.5.1 by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and

6.5.2 enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. SUPPLY OF SERVICES**

7.1 The Supplier, any contractor appointed by the Supplier, any sub-contractor of the Supplier or any other qualified third party appointed by the Supplier, shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. Upon delivery of the Goods (if applicable), the Supplier and the Customer shall agree and confirm a date for the Services to be performed pursuant to the Contract.

7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 For the avoidance of doubt, anything not explicitly stated within the Service Specification will be excluded from the Services.

7.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## **8. CUSTOMER'S OBLIGATIONS**

8.1 The Customer shall:

8.1.1 ensure that the terms of the Order and any information it provides in either or both the Service Specification and the Goods Specification are complete and accurate;

8.1.2 co-operate with the Supplier in all matters relating to the Services;

8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

8.1.4 provide the Supplier, its employees, agents, consultants and subcontractors with:

(a) access to electrical isolators and mains electrical power in locations agreed prior to installation. If the power supply is not provided at the time of commissioning, and Services cannot be provided and/or completed, the Customer agrees that there will be an additional cost incurred for the return visit to complete the Services;

(b) access to safe (and if applicable, validated) parking on the Customer site;

(c) cranes, scaffolding and/or lifting and offloading equipment as required (unless agreed otherwise between the Supplier and the Customer);

(d) a suitable defrost condensate waste water drain (if required); and

(e) safe storage of all Supplier Materials on site, both during the hours in which the Supplier is on site and overnight, if required;

(f) all relevant information required to allow for a successful delivery of Goods, such as access dimensions for entrances and any indoor dimension restrictions, prior to submission of the Order or within the Order;

8.1.5 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

8.1.6 prepare the Customer's premises for the supply of the Services;

8.1.7 if requested or if not specified as a Supplier responsibility within the Service Specification, obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

8.1.8 comply with all applicable laws, including health and safety laws;

8.1.9 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;

8.1.10 comply with any additional obligations as set out in the Service Specification or the Goods Specification or both;

8.1.11 in respect of cold store erections, ensure that the floor in the proposed room is hard, smooth and level (for the avoidance of doubt, this means +/- 5mm in 3,000mm) and that it has been cleared and there are no obstacles to the Supplier's provision of the Services;

8.1.12 ensure that waste bins and/or skips are available for use by the Supplier; and

8.1.13 if it has been agreed within the Service Specification that the Supplier will remove waste from the Customer site, ensure that the Supplier has suitable access between the Delivery Location and the delivery vehicle(s) to remove any waste materials during the period of the provision of the Services and on completion of the Services. It is the Customer's responsibility to ensure that the Supplier can remove all waste from the site on (or, if applicable, before) completion of the Services.

8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation, including but not limited to providing clear access to the Delivery Location (**Customer Default**):

8.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2 ; and

8.2.3 the Customer shall reimburse the Supplier on written demand and/or the Supplier may raise a purchase order/invoice for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8.3 For the avoidance of doubt, if a Customer Default occurs, the Supplier shall have the right to raise a new purchase order or invoice (as appropriate) and demand payment in full in respect of any costs incurred by the Supplier in attempting to provide the Services, including the cost of the Services. The Services under the original Order shall be re-arranged and will remain payable in full, as agreed within the Order.

## **9. CHARGES AND PAYMENT**

9.1 The price for Goods:

9.1.1 shall be the price set out in the Order or, if no price is stated in the Order, it will be the price set out within the relevant quote provided by the Supplier; and

9.1.2 shall be exclusive of all costs and charges of packaging, insurance and transport of the Goods, which shall be dealt with as per the Incoterms® Rules agreed by both parties in writing or as otherwise agreed by both parties.

9.2 The charges for Services shall be calculated on a fixed price basis and shall be as set out in the Order.

9.3 The Supplier reserves the right to:

9.3.1 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

(a) any factor beyond the control of the Supplier (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 Goods ordered, or the Goods Specification; or

(c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.4 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery (subject to the further provision of this clause 9.4 ). In respect of Services, the Supplier shall invoice the Customer on completion of the Services (subject to the further provision of this clause 9.4 ). In respect of a new Customer and/or on the basis of a credit check of the Customer, the Supplier reserves the right to invoice the Customer on or around the date of the Order and demand payment for all or part of the Goods or Services or Goods and Services (as applicable).

9.5 The Customer shall pay each invoice submitted by the Supplier:

9.5.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed in writing by the Supplier and the Customer; and

9.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.

9.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **10. INTELLECTUAL PROPERTY**

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services, including but not limited to any Intellectual Property Rights in the Deliverables provided as part of the Services, (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

10.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## **11. LIMITATION OF LIABILITY**

11.1 The limits and exclusions in this clause 11 reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.

11.2 References to liability in this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

11.3 Neither party may benefit from the limitations and exclusions set out in this clause 11 in respect of any liability arising from its deliberate default.

11.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

11.4.1 death or personal injury caused by negligence;

11.4.2 fraud or fraudulent misrepresentation;

11.4.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

11.4.4 defective products under the Consumer Protection Act 1987.

11.5 Subject to clause 11.3 and clause 11.4, the Supplier's total liability to the Customer shall not exceed an amount equal to the purchase price for the applicable Goods or Services or Goods and Services under the Contract. If the Customer would like to discuss additional protections, they are to contact the Supplier.

11.6 The cap on the Supplier's liability under clause 11.5 shall be reduced by:

11.6.1 amounts awarded or agreed to be paid under clause 5.2; or

11.6.2 amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.

11.7 This clause 11.7 sets out specific heads of excluded loss and exceptions from them:

11.7.1 Subject to clause 11.3 and clause 11.4, clause 11.7.3 identifies the kinds of loss that are not excluded. Subject to that, clause 11.7.2 excludes specified types of loss.

11.7.2 The following types of loss are wholly excluded:

(a) loss claims for food, pharmaceutical and/or other contents stored within the Goods supplied under the Contract;

(b) any loss resulting from:

(i) the Customer installing or using the Goods in such a way that exceeds its design envelope or operates the Goods at control parameters other than those provided as standard factory settings;

(ii) the Customer's failure to observe commonly operated practices;

(iii) the Customer not properly cleaning or maintaining the Goods as set out within the installation and operation instructions, as provided by the Supplier;

(iv) the Customer not carrying out the recommended service and maintenance checks as set out within the installation and operation instructions, as provided by the Supplier;

(v) the Customer connecting any third party parts to the Goods which are not supplied or approved by the Supplier, whether as part of a repair or otherwise;

(vi) improper installation by non-approved Supplier third parties, misuse, abuse, accidental damage or power loss or fluctuations;

(c) loss of profits;

(d) loss of sales or business;

(e) loss of agreements or contracts;

(f) loss of anticipated savings;

(g) loss of use or corruption of software, data or information;

(h) loss of or damage to goodwill; and

(i) indirect or consequential loss.

11.7.3 The following types of loss and specific loss are not excluded:

(a) sums paid by the Customer to the Supplier pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract; and

(b) losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the Customer.

11.8 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7 . In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

11.9 This clause 11 shall survive termination of the Contract.

## **12. TERMINATION**

12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving written notice to the other party within one week of the Commencement Date.

12.2 If the Customer terminates the Contract later than the date specified in clause 12.1 , the Supplier shall be entitled to reasonable compensation from the Customer. For the avoidance of doubt, if the Goods are in production, the Supplier shall be entitled to invoice the Customer and demand payment for the full amount as agreed within the Order, or if materials have been ordered or acquired by the Supplier for the purpose of fulfilling the Order, the Customer shall be responsible for the full cost of such materials.

12.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

12.3.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to respond to the notice from the other party informing them of how they intend to remedy the breach within a period of 30 days;

12.3.2 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

12.3.3 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

12.4 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

12.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment;

12.4.2 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy;

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

12.4.4 there is a change of Control of the Customer.

12.5 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.3.2 to clause 12.3.3 , or the Supplier reasonably believes that the Customer is about to become subject to any of them.

12.6 If the Customer cancels an Order for Spare Parts after either:

12.6.1 such Goods have been delivered to the relevant Delivery Location pursuant to a Delivery Option Order;

12.6.2 such Goods have been collected from the Delivery Location pursuant to an Ex Works Order;

12.6.3 such Goods are in transit, in respect of a Delivery Option Order;

12.6.4 such Goods are ready for collection, in respect of an Ex Works Order, the Customer might be subject to a transport re-stocking fee, to be reasonably determined at the discretion of the Supplier.

### **13. CONSEQUENCES OF TERMINATION**

13.1 On termination of the Contract:

13.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

13.1.2 the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

### **14. CONFIDENTIALITY**

14.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 14.2 .

14.2 Each party may disclose the other party's confidential information:

14.2.1 to its employees, officers, representatives, contractors or subcontracts 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 14 ; and

14.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 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.

## **15. FORCE MAJEURE**

15.1 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a **Force Majeure Event**. Force Majeure Event means any circumstances or causes beyond a party's reasonable control, including but not limited to:

15.1.1 acts of God, flood, drought, earthquake or other natural disaster;

15.1.2 epidemic or pandemic;

15.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

15.1.4 nuclear, chemical or biological contamination or sonic boom;

15.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

15.1.6 collapse of buildings, fire, explosion or accident;

15.1.7 any labour or trade dispute, strikes, industrial action or lockouts;

15.1.8 non-performance by suppliers or subcontractors; and

15.1.9 interruption or failure of utility service.

15.2 In the event of a Force Majeure Event, the time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 6 months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

## **16. GENERAL**

### **16.1 Assignment and other dealings**

Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the other party.

## 16.2 Notices.

16.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- (a) 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
- (b) sent by email to the email addresses as listed within the Contract (or an email address substituted in writing by the party to be served).

16.2.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) 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
- (c) if 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.

16.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**16.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 16.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

## 16.4 Waiver.

16.4.1 Except as set out in clause 2.7, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

16.4.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**16.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

## 16.6 Entire agreement.

16.6.1 The Contract constitutes the entire agreement between the parties.

16.6.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

## 16.7 Third party rights.

16.7.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

16.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

16.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

16.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.