

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES TO FORSBERG SERVICES LIMITED

1. INTERPRETATION

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

Charges: the charges payable by Forsberg for the supply of the Goods or Services in accordance with Clause 12 (Charges and payment).

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 20.5.

Contract: each contract between Forsberg and the Supplier for the supply of Goods or Services, comprising:

- 1.1.1 a Purchase Order;
 - 1.1.2 these Standard Conditions;
 - 1.1.3 the Mandatory Policies; and
 - 1.1.4 any additional terms or schedules specified in or attached to the Purchase Order.
- If there is any conflict or ambiguity between the terms of the documents listed in this definition, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Delivery Date: the date specified in a Purchase Order for delivery of an Order or such other date as may be agreed in writing between Forsberg and the Supplier prior to acceptance of an Order.

Delivery Location: the location specified in a Purchase Order for delivery or collection, as applicable, of any Goods the subject of the Order.

Forsberg: Forsberg Services Limited, a private limited company registered in Scotland with company number SC104949 and whose principal place of business is North Quay Offices, Heysham Port, Heysham LA3 2XF.

Customer Materials: has the meaning set out in Clause 5.3.10.

Customer IPRs: the Trade Marks and all Intellectual Property Rights of which Forsberg is the owner or licensee and which are disclosed, licensed or provided to the Supplier pursuant to a Contract.

Deliverables: any documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services

in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, 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.

Improvement: any improvement, development, enhancement, modification or derivative of the Product, or its design.

Goods: any goods (or any part of them) ordered by Forsberg, as set out in the Purchase Order.

Mandatory Policies: Forsberg's business policies and codes listed in Schedule 2.

Order: Forsberg's order for the supply of Goods and/or Services, as set out in a Purchase Order and accepted by the Supplier.

Order Confirmation: an order confirmation document substantially in the form set out at the bottom of each Purchase Order, sent by the Supplier to Forsberg, agreeing to fulfil an Order and confirming the Order Number of the Order.

Purchase Order: a purchase order form sent by Forsberg to the Supplier, requesting the supply of Goods and/or Services or confirming an oral order for Products.

Order Number: the number applied to an Order by the Supplier on receipt of a Purchase Order.

Services: any services (or any part of them), including any Deliverables, to be provided by the Supplier under a Contract, as set out in the Specification.

Specification: the detailed technical description or specification for the Goods or Services set out in or attached to the Purchase Order or otherwise agreed in writing between Forsberg and the Supplier prior to acceptance of an Order.

Supplier: the Supplier named on the relevant Purchase Order.

Trademarks: the registered trademarks of Forsberg (if any) to be applied to any Products, as detailed in the relevant Purchase Order.

1.2 Interpretation:

- 1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3 A reference to **writing** or **written** includes fax and emails.

2 BASIS OF CONTRACT

- 2.1 Each Purchase Order constitutes an offer by Forsberg to purchase Goods and/or Services on the terms of the Contract formed on acceptance by the Supplier of the Purchase Order.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
- 2.2.1 the Supplier issuing an Order Confirmation; or
- 2.2.2 any act by the Supplier consistent with fulfilling the Purchase Order,
- at which point and on which date the Contract shall come into existence (the "**Commencement Date**").
- 2.3 These Conditions apply to each Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3 ORDERS

- 3.1 When Forsberg wishes to place an Order, it shall either send a Purchase Order to the Supplier or submit an Order orally. Oral Orders shall be confirmed by a Purchase Order (bearing the additional words "confirmation of oral order") within five Business Days.
- 3.2 Each Purchase Order shall be deemed to be a separate offer by Forsberg to buy Goods or Services on the terms of this agreement, which the Supplier shall be free to accept or decline at its absolute discretion. No Purchase Order shall be deemed to be accepted by the Supplier until it issues an Order Confirmation or (if earlier) the Supplier performs any act consistent with fulfilling the Order.
- 3.3 The Supplier shall assign an Order Number to each Order received from Forsberg and inform Forsberg of the Order Number in the Order Confirmation. Each party shall use both the Purchase Order number and the relevant Order Number in all subsequent correspondence relating to the Order.

- 3.4 Forsberg may at any time prior to despatch of the ordered Goods or the provision of Services amend or cancel an Order by written notice to the Supplier. If Forsberg amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of amendment or cancellation, except that, where the amendment or cancellation results from the Supplier's failure to comply with its obligations under this agreement, Forsberg shall have no liability to the Supplier in respect of it.

4 FORECASTS

- 4.1 During the Term, Forsberg shall endeavour to give the Supplier a forecast of the Goods (including Products, if applicable) and/or Service it expects to purchase during the term (a "**Forecast**").
- 4.2 Forecasts shall be given in writing or, if given orally, shall be confirmed in writing within five Business Days. Forsberg shall act in good faith when forecasting its requirements for Goods (including Products) and/or Services.
- 4.3 Forecasts provided under this clause 4 do not constitute an Order.
- 4.4 If the Supplier anticipates that it will be unable to meet Forsberg's forecasted requirements provided in accordance with this clause 4:
- 4.4.1 the Supplier shall inform Forsberg in writing as soon as practicable.
- 4.4.2 Forsberg may at its option agree alternative delivery dates for the relevant Goods or Services, or obtain from any other person substitute goods or services which the Supplier anticipates it will be unable to supply without limiting any other right or remedy that Forsberg may have.

5 SUPPLY OF SERVICES

- 5.1 The Supplier shall from the date set in the Purchase Order and for the duration of each Contract provide any Services detailed in the Order to Forsberg in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or that Forsberg otherwise notifies to the Supplier and the Supplier accepts in writing, and time is of the essence in relation to any of those performance dates.
- 5.3 In providing the Services, the Supplier shall:
- 5.3.1 co-operate with Forsberg in all matters relating to the Services, and comply with all instructions of Forsberg that are consistent with the description of the Services set out in the Purchase Order;
- 5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 5.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

- 5.3.4 ensure that the Services and any Deliverables will conform with all descriptions, standards and specifications set out in the relevant Specification, and that the Deliverables shall be fit for any purpose that Forsberg expressly or impliedly makes known to the Supplier;
- 5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 5.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Forsberg, will be free from defects in workmanship, installation and design;
- 5.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 5.3.8 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Services, with the Mandatory Policies and any additional policies specified in the Purchase Order;
- 5.3.9 observe all health and safety rules and regulations and any other security requirements that apply at any of Forsberg 's premises;
- 5.3.10 hold all materials, equipment and tools, drawings, specifications and data supplied by Forsberg to the Supplier, including Customer IPRs (the "Customer Materials") in safe custody at its own risk, maintain Forsberg Materials in good condition until returned to Forsberg , and not dispose or use Forsberg Materials other than in accordance with Forsberg's written instructions or authorisation;
- 5.3.11 not do or omit to do anything which may cause Forsberg to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that Forsberg may rely or act on the Services;
- 5.3.12 comply with any additional obligations as set out in the Specification or Purchase Order; and
- 5.3.13 On request from Forsberg, provide to Forsberg evidence of any or all quality control or other compliance measures taken by the Supplier to ensure that the Services comply with the Specification or Purchase Order, as applicable.

6 SUPPLY OF GOODS

- 6.1 The Supplier shall ensure that any Goods:
 - 6.1.1 correspond with their description and any applicable Specification;
 - 6.1.2 are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by Forsberg expressly or by implication, and in this respect Forsberg relies on the Supplier's skill and judgement;
 - 6.1.3 where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery; and
 - 6.1.4 comply with all applicable statutory and regulatory requirements and any requirements of Forsberg set out in the Specification or Purchase Order relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;

- 6.1.5 are supplied together with all Deliverables required to enable Forsberg to use the Goods for the purpose for which they made known to the Supplier expressly or by implication, including any required testing certification, installation instructions and technical specifications; and
- 6.1.6 are supplied together with evidence of any or all quality control or other compliance measures taken by the Supplier to ensure that the Services comply with the Specification or Purchase Order, as applicable.
- 6.2 Forsberg has the right to inspect and test the Goods at any time before delivery.
- 6.3 If following such inspection or testing Forsberg considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 6.1, Forsberg shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 6.4 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Forsberg shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

7 DELIVERY OF GOODS

- 7.1 The Supplier shall ensure that:
 - 7.1.1 any Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
 - 7.1.2 each delivery of Goods is accompanied by a delivery note which shows the order number, the type and quantity of Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the relevant Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 7.2 The Supplier shall deliver any Goods specified in each Order:
 - 7.2.1 on or before its relevant Delivery Date;
 - 7.2.2 at the Delivery Location; and
 - 7.2.3 during Forsberg 's normal business hours, or as otherwise agreed in writing by Forsberg.
- 7.3 Delivery of Goods is completed on the completion of unloading of those Goods at the Delivery Location.
- 7.4 If the Supplier delivers more or less than the quantity of Goods ordered, and Forsberg accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods. If the Supplier delivers less than the quantity of Goods ordered, Forsberg may reject the Goods. If the Supplier delivers more than the quantity of Goods ordered, Forsberg may at its discretion reject the excess Goods.
- 7.5 Forsberg may reject any Goods delivered to it that do not comply with clause 6.1 or 8.9, as applicable, provided that:
 - 7.5.1 notice of rejection is given to the Supplier:

- 7.5.1.1 in the case of a defect that is apparent on normal visual inspection, within ten Business Days of Delivery; or
- 7.5.1.2 in the case of a latent defect, within a reasonable time of the latent defect having become apparent; and
- 7.5.2 none of the events listed in clause 7.7 apply.
- 7.6 If Forsberg fails to give notice of rejection in accordance with clause 7.5, it shall be deemed to have accepted these Products.
- 7.7 The Supplier shall not be liable for the Good's failure to comply with the warranty set out in clause 6.1 or 8.9, as applicable, if:
 - 7.7.1 Forsberg makes any further use of those Goods after giving notice of rejection in accordance with clause 7.5;
 - 7.7.2 the defect arises because Forsberg failed to follow the Supplier's written instructions for the storage, commissioning, installation, use and maintenance of the Goods;
 - 7.7.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by Forsberg;
 - 7.7.4 Forsberg alters those Goods without the written consent of the Supplier;
 - 7.7.5 the defect arises as a result of fair wear and tear or wilful damage or negligence by Forsberg.
- 7.8 Without prejudice to any other remedy available to Forsberg in respect of the Supplier's breach of its obligations under the Contract, if Forsberg rejects Products under clause 7.5 then Forsberg shall be entitled to:
 - 7.8.1 require the Supplier to repair or replace the rejected Goods; or
 - 7.8.2 require the Supplier to repay the price of the rejected Goods in full.
- 7.9 The terms of this agreement shall apply to any repaired or replacement Products supplied by the Supplier.
- 7.10 If Forsberg rejects any Goods they are returnable at the Supplier's risk and expense. If the Supplier fails to collect rejected Goods within a reasonable period after notification of the rejection, Forsberg may charge the Supplier storage costs and sell or dispose of the rejected Goods. Forsberg will account to the Supplier for the proceeds of sale (if any) after deducting the purchase price paid for the Goods, storage costs and its reasonable costs and expenses in connection with the sale.
- 7.11 The Supplier shall not deliver Orders in instalments without Forsberg's prior written consent. Where it is agreed that Orders may be delivered by instalments, such instalments shall be invoiced separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment, shall entitle Forsberg to the remedies set out in clause 8.
- 7.12 Title and risk in any Goods shall pass to Forsberg on completion of delivery.

8 ADDITIONAL TERMS CONCERNING THE MANUFACTURE OF GOODS DESIGNED BY (OR FOR) FORSBERG

The following provisions shall apply where the Services include the manufacture and supply of Goods to a design specification supplied to the Supplier by (or on behalf of) Forsberg ("**Manufacturing Services**").

Customer Equipment: the equipment (if any), including Tooling, that is necessary for the manufacture and assembly of the Products and to be supplied to the Supplier by Forsberg, as set out in the Purchase Order or as updated by Forsberg from time to time.

Materials: all forms, manuals, records, artwork and other documents and materials provided by Forsberg to the Supplier in connection with the Manufacturing Services.

Products: the products manufactured pursuant to the Manufacturing Services.

Technology: all methods, techniques, discoveries, inventions (whether patentable or not), formulae, formulations, technical and product specifications, equipment descriptions, plans, layouts, drawings, computer programs, assembly, quality control, installation and operating procedures, operating manuals, technical and marketing information, designs, data, know-how and other information.

Tooling: any tooling, dies, drills, moulds, presses, vessels, tools and machinery, and related items necessary for the manufacture and assembly of the Products and to be supplied to the Supplier by Forsberg, as set out in the Purchase Order or as updated by Forsberg from time to time.

- 8.1 As soon as practicable after the formation of a Contract for the supply of Manufacturing Services, Forsberg shall at its own cost disclose to the Supplier such Technology and Materials as are necessary to enable the Supplier to manufacture the Products in accordance with the Specification.
- 8.2 The disclosure of any Technology to the Supplier and any document containing or recording it in connection with this agreement is subject to the confidentiality provisions set out in clause 20.3.
- 8.3 Forsberg shall on the date specified in the Order supply the Equipment (if any) to the Supplier and install it at the Supplier's premises. The Equipment remains the absolute property of Forsberg and the Supplier may not part with possession of it, or make it available, to any third party.
- 8.4 The Supplier shall, for the period it has possession or control of the Equipment:
 - 8.4.1 have the sole risk of loss or damage to the Equipment;
 - 8.4.2 ensure that the Equipment is kept secure and identified as the property of Forsberg; and
 - 8.4.3 maintain, with a reputable insurance company, insurance cover for any loss or damage to the Equipment for its full replacement cost and shall (at the request of Forsberg) have Forsberg's interest noted on the policy.

- 8.5 The Supplier shall on or before the date specified in the Order submit to Forsberg for approval pre-production samples of the Product.
- 8.6 The Supplier shall not commence manufacture of the Products until Forsberg has communicated its approval of the samples to the Supplier in writing (such approval not to be unreasonably withheld or delayed).
- 8.7 Forsberg's approval of the samples constitutes irrevocable confirmation that if Products are manufactured in conformity with the samples (or differing only within normal industrial limits) they will comply with the Specification.
- 8.8 The Supplier shall manufacture, pack and supply all Products in accordance with the relevant Specification and all generally accepted industry standards and practices that are applicable.
- 8.9 The Supplier warrants and undertakes that all Products supplied to Forsberg by the Supplier in connection with the supply of the Manufacturing Services shall:
 - 8.9.1 conform to the Specification;
 - 8.9.2 comply with all applicable statutory and regulatory requirements; and
 - 8.9.3 otherwise comply with the requirements set out in clause 6.1.
- 8.10 Unless otherwise expressly stated to the contrary in any Contract, any Products supplied to Forsberg by the Supplier in connection with the supply of the Manufacturing Services shall comprise Goods for the purposes of these Standard Conditions.

9 INSPECTIONS

- 9.1 Forsberg shall have the right to enter the Supplier's premises to:
 - 9.1.1 inspect the manufacturing facilities used by the Supplier in the manufacture of any Goods;
 - 9.1.2 inspect and take samples of the raw materials and/or the packaging of any Products; and
 - 9.1.3 inspect the Supplier's records and take copies for the purposes of auditing the Supplier's compliance with the obligations set out in this agreement.
- 9.2 Inspections carried out under clause 9.1 shall be carried out during business hours on reasonable notice to the Supplier, provided that in the event of emergency, the Supplier shall grant Forsberg immediate access to its premises.
- 9.3 If following an inspection Forsberg reasonably considers that Goods (including any Products) are not or are not likely to be as warranted under clause 6.1 or 8.9, as applicable, Forsberg shall inform the Supplier and the Supplier shall take any action as is necessary to ensure that the Products are or will be as warranted under clause 6.1 or 8.9. Forsberg shall have the right to reconduct inspections and take further samples after the Supplier has carried out its remedial actions.

10 REMEDIES AVAILABLE TO FORSBERG

Remedies relating to the supply of Services

- 10.1 If the Supplier fails to perform the Services (or any part of them) by the applicable dates, Forsberg shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
 - 10.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier (including any part of the Contract relating to the supply of Goods);
 - 10.1.2 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 10.1.3 to recover from the Supplier any costs incurred by Forsberg in obtaining substitute services from a third party;
 - 10.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided; and
 - 10.1.5 to claim damages for any additional costs, loss or expenses incurred by Forsberg which are in any way attributable to the Supplier's failure to meet such dates.
- 10.2 If the Supplier has supplied Services that do not comply with the requirements of clause 5.3.4 then, without limiting or affecting other rights or remedies available to it, Forsberg shall have one or more of the following rights:
 - 10.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier (including any part of the Contract relating to the supply of Goods);
 - 10.2.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;
 - 10.2.3 to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services;
 - 10.2.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 10.2.5 to recover from the Supplier any expenditure incurred by Forsberg in obtaining substitute services or deliverables from a third party; and
 - 10.2.6 to claim damages for any additional costs, loss or expenses incurred by Forsberg arising from the Supplier's failure to comply with clause 5.3.4.
- 10.3 These Conditions shall extend to any substituted or remedial Services provided by the Supplier.

Remedies relating to the supply of Goods

- 10.4 If the Goods are not delivered on the relevant Delivery Date, or do not comply with the undertakings set out in clause 6.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, and Forsberg may exercise any one or more of the following remedies:
 - 10.4.1 to terminate the Contract with immediate effect by giving written notice to the Supplier (including any part of the Contract relating to the supply of Services);
 - 10.4.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 10.4.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 10.4.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 10.4.5 to recover from the Supplier any costs incurred by Forsberg in obtaining substitute goods from a third party; and

- 10.4.6 to claim damages for any other costs, loss or expenses incurred by Forsberg which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 10.5 If the Goods are not delivered on the Delivery Date, Forsberg may at its option, claim or deduct 1% per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 10% per cent of the total price of the Goods. If Forsberg exercises its rights under this clause 10.5, it may not exercise any of the remedies set out in clause 10.4 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition and conformity with the undertakings set out in clause 6.1).
- 10.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

Availability of other Remedies

- 10.7 Forsberg's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

11 CUSTOMER'S OBLIGATIONS

Forsberg shall provide such necessary information for the provision of the Services or Goods as the Supplier may reasonably request, including any further technical details required to be supplied to enable the Supplier to meet the Specification.

12 CHARGES AND PAYMENT

- 12.1 The Charges for the Goods and/or Services shall be set out in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services and delivery of the Goods.
- 12.2 Unless otherwise agreed in writing by Forsberg, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services or supply of the Goods including the costs of packaging, insurance and carriage of the Goods.
- 12.3 The Supplier shall invoice Forsberg on completion of the Services and/or supply of the Goods, as applicable. Each invoice shall include such supporting information required by Forsberg to verify the accuracy of the invoice, including the relevant Order Number.
- 12.4 The Supplier shall ensure that the invoice includes the date of the Purchase Order, the Order Number, the invoice number and the Supplier's VAT registration number.
- 12.5 In consideration of the supply of the Services by the Supplier, Forsberg shall pay the invoiced amounts within 45 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier and set out on the invoice.
- 12.6 All amounts payable by Forsberg under the Contract are exclusive of amounts in respect of value added tax

chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Forsberg, Forsberg 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 at the same time as payment is due for the supply of the Services.

- 12.7 If Forsberg fails to make a payment due to the Supplier under the Contract by the due date, then Forsberg 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 12.7 will accrue each day at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%.
- 12.8 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing any Services and shall allow Forsberg to inspect such records at all reasonable times on request.
- 12.9 Forsberg may at any time, without notice to the Supplier, set off any liability of the Supplier to Forsberg against any liability of Forsberg to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by Forsberg of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 12.10 This clause 12 shall survive termination of the Contract.

13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 The Supplier acknowledges and agreed that:
- 13.1.1 all Customer Materials and all rights in Customer Materials are and shall remain the exclusive property of Forsberg;
- 13.1.2 Forsberg IPRs are and remain the exclusive property of Forsberg or, where applicable, the third-party licensor from whom Forsberg derives the right to use them; and
- 13.1.3 all other Intellectual Property Rights used for the manufacture of any Product that originated from the Supplier shall remain the exclusive property of the Supplier (or, where applicable, the third-party licensor from whom the Supplier derives the right to use them).
- 13.2 Forsberg grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to utilise any Customer Materials provided to the Supplier for the term of any Contract exclusively for the purpose of providing the Services to Forsberg.
- 13.3 The Supplier's use of the Trademarks is limited to applying them to the Products in the form and manner specified by Forsberg from time to time, and not otherwise.
- 13.4 All Intellectual Property Rights in respect of any Improvement shall belong to Forsberg, notwithstanding that it may have been identified, made or developed by the Supplier. Forsberg grants to the Supplier a non-exclusive, royalty-free, worldwide

licence to use any such Improvement solely for the purposes of providing the Manufacturing Services.

- 13.5 All Intellectual Property Rights generated in the provision of the Services (other than Intellectual Property Rights in any Customer Materials) including the Deliverables shall be owned by Forsberg.
- 13.6 The Supplier grants to Forsberg, or shall procure the direct grant to Forsberg of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.
- 13.7 The Supplier shall at the request and expense of Forsberg take all such steps as Forsberg may reasonably require to assist the Supplier in maintaining the validity and enforceability of Customer IPRs, and shall enter into such formal licences as Forsberg may reasonably request for this purpose.
- 13.8 The Supplier shall not represent that it has any title in or right of ownership to any of Forsberg IPRs, including the Trade Marks, or do or suffer to be done any act or thing which may in any way impair the rights of Forsberg in any of Forsberg IPRs, including the Trade Marks, or bring into question the validity of their registration (if applicable).

14 GENERAL INDEMNITY

- 14.1 The Supplier shall indemnify Forsberg against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Forsberg arising out of or in connection with:
 - 14.1.1 any claim brought against Forsberg for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services (excluding Customer Materials); and
 - 14.1.2 any claim (whether in contract or tort) made against Forsberg by a third party arising out of, or in connection with, the supply of the Goods and/or Services by the Supplier.
- 14.2 This Clause 14 shall survive termination of the Contract.

15 PRODUCT LIABILITY INDEMNITY

- 15.1 Without prejudice to any other remedy available to Forsberg in respect of the Supplier's breach of its obligations under the relevant Contract, if any claim is made against Forsberg arising out of or in connection with the manufacture of or any defect in any Products, the Supplier shall (except to the extent that the claim is due to any defect in the Specification, or the Technology or Equipment) indemnify Forsberg against all damages or other compensation awarded against Forsberg in connection with the claim or paid or agreed to be paid by Forsberg in settlement of the claim and all legal or other expenses incurred by Forsberg in or about the defence or settlement of the claim.

- 15.2 Forsberg shall notify the Supplier as soon as practicable after becoming aware of the claim, but shall not be required to take any action requested by the Supplier to avoid, compromise or defend the claim and any proceedings in respect of the claim, unless:
 - 15.2.1 Forsberg is indemnified and secured to its reasonable satisfaction against all costs and expenses which may be incurred in doing so; and
 - 15.2.2 Forsberg determines in its absolute discretion that the taking of such action will not materially adversely affect the commercial interests of Forsberg (or any member of its group).

16 IPR INDEMNITY

- 16.1 Forsberg shall indemnify the Supplier against all direct liabilities, costs, expenses, damages and losses and all and other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights or moral rights arising out of or in connection with the use of Forsberg IPRs, the Equipment or the Technology in accordance with the provision of Manufacturing Services pursuant to the terms of any Contract.
- 16.2 Forsberg's liability under clause 16.1 is conditional on the Supplier discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Supplier that may reasonably be considered likely to give rise to a liability under this indemnity (an "IPR Claim"), the Supplier shall:
 - 16.2.1 as soon as reasonably practicable, give written notice of the IPR Claim to Forsberg, specifying the nature of the IPR Claim in reasonable detail; and
 - 16.2.2 not make any admission of liability, agreement or compromise in relation to the IPR Claim without the prior written consent of Forsberg;

17 INSURANCE

- 17.1 During the term of each Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company:
 - 17.1.1 where Services are to be supplied, professional indemnity insurance with a limit of at least £2,000,000 million per claim;
 - 17.1.2 where Goods are to be supplied, product liability insurance with a limit of at least £2,000,000 million for claims arising from a single event or series of related events in a single calendar year; and
 - 17.1.3 at all times, public liability insurance with a limit of at least £5,000,000 million per claim; and
 - 17.1.4 to cover the liabilities that may arise under or in connection with all Contracts and shall, on Forsberg's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 17.2 The Supplier shall notify Forsberg if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

17.3 The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 17.1.

18 TERMINATION

18.1 Without limiting or affecting any other right or remedy available to it, Forsberg may terminate any Contract that has not yet been completed:

18.1.1 with immediate effect by giving written notice to the Supplier if:

18.1.1.1 there is a change of control of the Supplier; or

18.1.1.2 the Supplier's financial position deteriorates to such an extent that in Forsberg's opinion the Supplier's capability to adequately fulfil its obligations under any Contract has been placed in jeopardy; or

18.1.1.3 the Supplier commits a breach of Clause 5.3.8 ; or

18.1.2 for convenience by giving the Supplier three months' written notice.

18.2 Without limiting or affecting any other right or remedy available to it, either party may terminate any Contract that has not yet been completed with immediate effect by giving written notice to the other party if:

18.2.1 the other party commits a material breach of any term of a Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 15 days after being notified in writing to do so;

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

18.2.3 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.

19 CONSEQUENCES OF TERMINATION

19.1 On termination of any Contract for any reason, the Supplier shall immediately deliver to Forsberg all relevant Deliverables whether or not then complete and return all relevant Customer Materials. If the Supplier fails to do so, then Forsberg may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose.

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

19.3 Any provision of any Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

20 GENERAL

20.1 **Force majeure.** Neither party shall be in breach of a Contract nor liable for delay in performing, or failure to perform, any of its obligations under a Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for three months, the party not affected may terminate a Contract by giving 30 days' written notice to the affected party.

20.2 Assignment and other dealings.

20.2.1 Forsberg may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under any Contract.

20.2.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under any Contract without the prior written consent of Forsberg.

20.3 Confidentiality.

20.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 20.3.2.

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

20.3.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under a Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 20.3; and

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

20.3.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under a Contract.

20.3.4 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

20.4 **Entire agreement.** Each Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 20.5 **Variation.** Except as set out in these Standard Conditions, no variation of a Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 20.6 **Waiver.** A waiver of any right or remedy under a Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under a Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under a Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.7 **Severance.** If any provision or part-provision of a Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of a Contract.
- 20.8 **Notices.**
- 20.8.1 Any notice or other communication given to a party under or in connection with a Contract shall be in writing, and shall be 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 sent by fax to its main fax number or sent by email to the address specified in the Purchase Order.
- 20.8.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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, if sent by fax or email, on receipt of confirmation of successful transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 20.8.2, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 20.8.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 20.9 **Third party rights.**
- 20.9.1 Unless it expressly states otherwise, a Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of a Contract.
- 20.9.2 The rights of the parties to rescind or vary a Contract are not subject to the consent of any other person.
- 20.10 **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.
- 20.11 **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 a Contract or its subject matter or formation.