

Swanson Mackay & co ltd

STANDARD CONTRACTUAL TERMS AND CONDITIONS OF SALE AND SUPPLY

1. Interpretation

1.1 In these Terms:

“Buyer” means the person who accepts a quotation or proposal from COMPANY for the sale of COMPANY’s Goods, Services and/or Products, or whose order for those Goods, Services and/or Products is accepted by COMPANY, which Buyer, by express or implied acceptance, [or online registration], has accepted these Terms, subject to the content and terms of any Special Conditions contained in any Appendix attached hereto which is signed and dated by COMPANY and the Buyer;

“COMPANY” or “Contracting Party” means Swanson Mackay & Co ltd, a company registered in England & Wales with registered office at :-

19 CHURCH STREET
ROSS ON WYE
HEREFORDSHIRE
HR9 5HN

CRN 01849184

“Contract” means the arrangement for the supply and acquisition of the Goods, Services and/or Products, together with all related orders or requests made from time to time by the Buyer to COMPANY, subject at all time to these Terms;

“Goods” means any and all goods (including any instalment of the goods or any parts for them) which COMPANY is to directly supply (or otherwise facilitate the supply of), and which supply is subject to these Terms, at the price levels and payment timings agreed in these Terms or otherwise from time to time;

"Intellectual Property" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;

[“Nominated Supplier(s)” means suppliers nominated by COMPANY to perform its obligations under the Terms from time to time;]

“Parties” means COMPANY and the Buyer;

“Products” means any and all products purchased from or supplied by the COMPANY, or Goods directly supplied by the COMPANY to the Buyer from time to time and which

purchase or supply is subject to these Terms with COMPANY, at the price levels [and payment timings agreed in these Terms or otherwise from time to time];

“Services” means any and all services which COMPANY supplies from time to time in accordance with these Terms to the Buyer and which supply is subject to these Terms with COMPANY, at the price levels [and payment timings agreed in these Terms or otherwise from time to time];

“Terms” means the Standard Contractual Terms and Conditions of Sale and Supply set out in this document (together with any Appendix), and in the event that there is a conflict between the terms of these standard Contractual Terms and Conditions of Sale and Supply, and such Special Conditions as are contained in any Appendix attached and agreed/executed by COMPANY and the Buyer, the terms of the Appendix shall prevail;

“Writing”, and any similar expression, includes facsimile transmission and electronic mail;

2. Basis of the sale

2.1 COMPANY shall sell and the Buyer shall purchase from COMPANY, subject in every case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted by COMPANY, or any such order is made or purported to be made, by the Buyer. At the expiry of any fixed or initial term benefits referred to, or contained, in any Appendix, costs for the Goods and/or Products and Service shall be renegotiated between COMPANY and the Buyer, or otherwise be subject to the then prevailing costs applied by COMPANY to those Goods and/or Products and Services.

2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and COMPANY.

2.3 COMPANY’s employees and agents are not authorised to make any representations or give any advice or

recommendation concerning the Goods, Services or Products unless confirmed by authorised representatives of COMPANY in Writing. By entering into the Terms, the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for death or personal injury.

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by COMPANY, shall be subject to correction without any liability on the part of COMPANY, and any loss or damage to COMPANY rectified by the Buyer without delay.

3. Orders and specifications

3.1 No order submitted by the Buyer from time to time shall be deemed to be accepted by COMPANY unless

and until confirmed in writing by COMPANY's authorised representative.

3.2 The Buyer shall be responsible to COMPANY for ensuring the accuracy of the terms of any future order (including any

applicable specification) submitted by the Buyer, and for giving COMPANY (or Nominated Suppliers, as the case may be) any necessary information and support relating to the Goods, Services or Products within a sufficient time to enable COMPANY (or Nominated Suppliers, as the case may be) to perform contractual duties in accordance with their terms.

3.3 The quantity, quality and description of the Goods, Services and/or Products which the Buyer sources from COMPANY and any specification for them shall be as set out in COMPANY's written quotation or proposal or the Buyer's order (if accepted by COMPANY).

3.4 If the Contract is to be performed by COMPANY in accordance with a specification submitted by the Buyer, the Buyer shall indemnify COMPANY against all loss, damages, costs and expenses whatsoever awarded against or incurred by COMPANY or its officers, employees, affiliates, group companies or representatives in connection with, or paid or agreed to be paid by COMPANY in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or Intellectual Property rights of any other person which results from COMPANY's use of the Buyer's specification.

3.5 COMPANY reserves the right to make any changes in the specification of the Goods, Services and/or Products which are required to conform with any applicable statutory requirements or, where the Goods, Services and/or Products are to be supplied to COMPANY's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by COMPANY specifically may be cancelled by the Buyer except with the agreement in

writing of COMPANY and on terms that the Buyer shall indemnify COMPANY and its officers, agents and its officers, employees, affiliates, group companies and representatives, in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by COMPANY as a result of cancellation.

3.7 Any description given or applied to the Goods, Services and/or Products is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer affirms that it does not in any way rely on any description provided by COMPANY, whether online or otherwise, when entering into the contract. Where a sample of the Goods, Services and/or Products is shown to and inspected by the Buyer, the parties hereto accept that such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing or sourcing process.

3.8 The Buyer warrants and undertakes to COMPANY to fully indemnify COMPANY against any and all losses whatsoever arising as a direct or indirect result of such misuse of the Goods, Services and/or Products by the Buyer (including professional costs), whether financial, reputation, intellectual property or otherwise based.

4. Price of the goods

4.1 The price of the Goods, Services and/or Products shall be the quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the COMPANY published price list current at the date of acceptance of the order. All prices quoted are valid for [30 days only] or until earlier acceptance by the Buyer, after which time they may be altered by COMPANY without giving notice to the Buyer.

4.2 COMPANY reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods, Services and/or Products to reflect any increase in the cost to COMPANY which is due to any factor beyond the control of COMPANY (such as, without limitation, any foreign exchange fluctuation, third party error or omission, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture or supply, any change in delivery dates, quantities or specifications for the Goods, Services and/or Products which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give COMPANY adequate information, support or instructions).

4.3 Except as otherwise stated in COMPANY's quotation or in any price list of COMPANY, and unless otherwise agreed in writing between the Buyer and COMPANY, all prices are given on an ex works basis, and where COMPANY agrees to deliver the Goods, Services and/or Products otherwise than at COMPANY's premises, the Buyer shall be liable to pay COMPANY's charges for transport, packaging, administration and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to COMPANY.

5. Terms of payment

5.1 Subject to any special terms agreed in Writing between the Buyer and COMPANY from time to time, COMPANY may invoice the Buyer for the price of the Goods, Services and/or Products [on or at any time after delivery of the Goods/Products or performance of the Services (as the case may be)].

5.2 If the Buyer wrongfully fails to take delivery of the Goods and/or Products, COMPANY shall be entitled to invoice the Buyer for the price at any time after COMPANY has notified the Buyer that the Goods and/or Products are ready for collection.

5.3 The Buyer shall pay the price of the Goods, Services and/or Products within 30 days of the date of delivery or on any stipulated earlier date for payment, unless otherwise agreed between the Parties in writing. The time of payment of the price shall be of the essence of the

Contract, and the Buyer hereby agrees to indemnify COMPANY against any and all losses resulting from breach of this clause 5.

5.4 If the Buyer fails to make any payment on the due date then in addition, and without limiting any other right or remedy available to COMPANY, COMPANY may:

5.4.1 cancel the Contract or suspend any further deliveries of the Goods, Services and/or Products or performance of the Services to the Buyer;

5.4.2 appropriate any payment made by the Buyer in respect of any and all Goods, Services and/or Products supplied under any contract between the Buyer and COMPANY as COMPANY may think fit;

5.4.3 claim interest and/or compensation for reasonable debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented from time to time;

5.4.4 claim the benefit of any liquidated damages provision agreed between COMPANY and the Buyer;

5.4.5 demand all and any sums due and owing immediately and be paid as such; and/or

5.4.6 refuse to make any further delivery of Goods, Products and/or Services without payment in advance; and/or

6. Delivery

6.1 Delivery of the Goods and/or Products shall be made by the Buyer collecting the Goods at the premises of COMPANY at any time after COMPANY (or a Nominated Supplier, as the case may be) has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed, by COMPANY (or a Nominated Supplier, as the case may be) delivering the Goods and/or Products to that place.

6.2 Any dates quoted for delivery of the Goods and/or Products, or performance of the Services, are approximate only and COMPANY shall not be liable for any delay however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by COMPANY in Writing. The Goods, Services and/or Products may be delivered by COMPANY (or a Nominated Supplier, as the case may be) in advance of the quoted delivery date on giving reasonable notice to the Buyer.

6.3 Where the Goods and/or Products are to be delivered in instalments, each delivery shall constitute a separate contract and failure by COMPANY (or a Nominated Supplier, as the case may be) to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract, as a whole, as repudiated, or obviate any of the Buyer's duties and obligations to COMPANY under these Terms.

6.4 If COMPANY fails to deliver the Goods, Services and/or Products (or any instalment) for any reason other than any cause beyond COMPANY's reasonable control or the Buyer's fault, and COMPANY is accordingly liable to the Buyer, COMPANY's liability shall be limited to sums paid by the Buyer under the Contract. COMPANY shall, for the avoidance of doubt, incur no liability whatsoever to the Buyer for any failure of a Nominated Supplier to deliver the Goods, Services and/or Products, or any breach related to such provision.

6.5 If the Buyer fails to take delivery of the Goods and/or Products, or fails to give COMPANY adequate delivery instructions at the time stated for delivery (other than by reason of any cause beyond the Buyer's reasonable control or by reason of COMPANY's fault) then, without limiting any other right or remedy available to COMPANY, COMPANY may:

6.5.1 store the Goods and/or Products until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; and/or

6.5.2 sell the Goods and/or Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. Risk and property

7.1 Risk of damage to or loss of the Goods and/or Products shall pass to the Buyer:

7.1.1 in the case of Goods and/or Products to be delivered at the premises of COMPANY or a Nominated Supplier, at the time when COMPANY or a Nominated Supplier notifies the Buyer that the Goods and/or Products are available for collection; or

7.1.2 in the case of Goods and/or Products to be delivered otherwise than at the premises of COMPANY or a Nominated Supplier, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods and/or Products, the time when COMPANY or a Nominated Supplier has tendered delivery of the Goods and/or Products.

7.2 Notwithstanding delivery and the passing of risk in the Goods and/or Products, or any other provision of these Terms, the property in the Goods and/or Products shall not pass to the Buyer until COMPANY has received in cash or cleared funds payment in full of the price of the Goods and/or Products and all other goods/products agreed to be sold by COMPANY or a Nominated Supplier to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods and/or Products passes to the Buyer, the Buyer shall hold the Goods and/or Products as COMPANY's fiduciary agent and bailee, and shall keep the Goods and/or Products separate from those of the Buyer and third parties and properly stored, protected and insured and identified as COMPANY's property, but the Buyer may resell or use the Goods and/or Products in the ordinary course of its business.

7.4 Until such time as the property in the Goods and/or Products passes to the Buyer (and provided the Goods and/or Products are still in existence and have not been resold), COMPANY may at any time require the Buyer to deliver up the Goods and/or Products to

COMPANY or its Nominated Supplier (at its discretion) and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods and/or Products are stored and repossess the Goods and/or Products.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods and/or Products which remain the property of COMPANY or its Nominated Supplier, but if the Buyer does so all moneys owing by the Buyer to COMPANY shall (without limiting any other right or remedy of COMPANY) forthwith become due and payable.

7.6 Any and all Intellectual Property rights expressly or impliedly disclosed or licenced to the Buyer under this Agreement (whether expressly or impliedly), or produced from, developed or arising as a result of the performance of these Terms shall remain, or so far as not already vested, become the absolute property of the COMPANY. The Buyer shall not utilise such Intellectual Property in any unauthorised manner without the prior written consent of COMPANY, and shall do all that is reasonably necessary to ensure that such rights remain or are vested in COMPANY by the execution of appropriate instruments or the making of agreements with third parties, should COMPANY so require. The Buyer shall indemnify COMPANY, as well as its officers, employees, affiliates, group companies and representatives fully against any and all losses caused by a breach of this clause 7.6 by the Buyer or any third party as a result of the Buyer's unauthorised use or disclosure of Intellectual Property.

8. Warranties and liability

8.1 Subject to the following provisions COMPANY warrants that the Goods and/or Products provided directly by COMPANY will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of [1 month from delivery].

8.2 COMPANY warrants that it will use reasonable skill and care in performing the Services.

8.3 The above warranties are, however, given by COMPANY subject to the following specific conditions and exclusions:

8.3.1 COMPANY shall be under no liability in respect of any defect in the Goods and/or Products or Services arising from any drawing, design or specification supplied by the Buyer;

8.3.2 COMPANY shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow COMPANY's or manufacturer's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods and/or Products without COMPANY's approval;

8.3.3 COMPANY shall be under no liability under the above warranties (or any other warranty, condition or guarantee) if the total price for the Goods and/or Products or Services has not been paid by the due date for payment;

8.3.4 The above warranty does not extend to any Goods and/or Products (or parts thereof) not manufactured by COMPANY, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by any relevant third party(ies).

8.4 The Buyer, by agreeing to these Terms, confirms expressly that they are not a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) and to fully indemnify COMPANY against any and all losses whatsoever arising from this not being the case.

8.5 Without prejudice to the generality of clause 8.4, COMPANY does not warrant that any Goods, Services and/or Products will be fit for any particular purpose (whether made known to COMPANY or not). The Buyer acknowledges and agrees that it is responsible for inspecting and testing all Goods and/or Products and for ensuring that the Goods and/or Products are suitable for their particular and proposed purpose(s), but that this will have no impact on its payment obligations to COMPANY whatsoever.

8.6 Where the Goods and/or Products or Services are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Terms, subject to the indemnity provision contained in clause 8.4 above.

8.7 Problems based on any defective performance of the Services or defect in the quality or condition of the Goods and/or Products directly purchased from COMPANY, or their failure to correspond with specification, shall (whether or not delivery is refused by the Buyer) be notified to COMPANY within seven days from the date of delivery of the Goods and/or Products or performance of the Services in question or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.

8.8 Where a valid claim in respect of any of the Goods and/or Products or Services directly purchased from COMPANY is notified to COMPANY in accordance with these Terms, COMPANY may replace the Goods and/or Products (or the part in question) or re-perform the Services free of charge or, at COMPANY's sole discretion, refund to the Buyer the price of the Goods and/or Products or Services in question (or a proportionate part of the price), in which case COMPANY shall have no further liability to the Buyer.

8.9 COMPANY shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of any Contract, whether express or implied, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of COMPANY, its employees, agents, Nominated Suppliers or otherwise) which arise out of or in connection with the supply of the Goods and/or Products or Services (including any delay in supplying or any failure to supply the Goods and/or Products or Services in accordance with the Terms or at all) or their use or resale by the Buyer, and the entire liability of COMPANY under or in connection with any Goods and/or Products or Services purchased by the Buyer from COMPANY directly, or from a Nominated Supplier, shall not exceed the price of the Goods and/or Products or Services, except as expressly provided in these Terms.

8.9.1 COMPANY shall not be liable to the Buyer or be deemed to be in breach of the Terms by reason of any delay in performing, or any failure to perform, any obligations of COMPANY or a Nominated Supplier in relation to the Goods and/or Products or Services.

9. Insolvency of Buyer

9.1 This clause 9 applies if:

9.1.1 the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or

9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer;

9.1.3 or the Buyer ceases, or threatens to cease, to carry on business; or

9.1.4 COMPANY reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then, without limiting any other right or remedy available to COMPANY, COMPANY may cancel the Terms or suspend any further deliveries or performance under the Terms without any liability to the Buyer, and if the Goods and/or Products have been delivered or Services performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. Confidentiality

10.1 The Buyer shall keep confidential and not (except as authorised or required for the purposes of the Terms) use or disclose to any person or attempt to use or disclose to any person any information (whether or not expressed to be confidential) which it acquires from COMPANY relating to COMPANY's business, business methods, organisation, finances or suppliers, including, for the avoidance of doubt, Intellectual Property.

10.2 The restrictions in clause 10.1 shall not apply to information which the Buyer establishes:

10.2.1 is known to the Buyer at the date of the disclosure by COMPANY, as evidenced from written records;

10.2.2 is after the date of disclosure by COMPANY acquired by the Buyer in good faith from an independent third party; and/or

10.2.3 has in its entirety become public knowledge otherwise than in breach of those restrictions.

11. General

11.1 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 Any and all rights granted to the Buyer under this Agreement against COMPANY shall be exercisable solely against the COMPANY and, where appropriate, references to COMPANY in these Terms, shall be construed accordingly.

11.3 No waiver by COMPANY of any breach of the Terms by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.5 If any term or provision(s) of these Terms is/are held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms had been agreed with the invalid, illegal or unenforceable provision eliminated.

11.6 The Terms between COMPANY and the Buyer for the sale of Goods and/or Products and / or Services shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of COMPANY, acting by an authorised, registered representative.

11.7 The Buyer warrants and confirms that the individual(s) agreeing to these Terms on its behalf is /are fully authorised to do so, and that individual(s) from time to time who place orders to COMPANY on behalf of the Buyer, are also fully authorised, and the Buyer shall indemnify COMPANY should this not be the case in respect of all expense and loss resulting at any time.

11.8 Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between COMPANY and the Buyer, and nothing in this Agreement shall be deemed to construe either of the parties as the agent of the other.

11.9 These Terms are private to COMPANY and the Buyer, and nothing in these Terms is intended to, nor shall it, confer any rights on a third party whatsoever, including, for the avoidance of doubt, any Nominated Supplier or group companies, affiliates, officers and/or employees of the Buyer, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

11.10 The Buyer undertakes not to enter into any contractual obligation which would materially affect its ability to perform its duties and obligations to COMPANY under these Terms, and agrees to indemnify COMPANY against any and all losses resulting from breach of this clause 11.10.

11.11 By entering these Terms, the Buyer warrants and undertakes that it has in place Anti-Bribery and Fraud Prevention policies that demonstrate full compliance with relevant laws in

place, and that they will keep these up to date, and the Buyer hereby fully indemnifies COMPANY against any and all breaches on the part of the Buyer from time to time.

11.12 These Terms contains the entire agreement between COMPANY and the Buyer relating to the subject matter and supersede any and all previous agreements, arrangements, undertakings or proposals, oral or written.

11.13 COMPANY and Supplier agree to hold all relevant data in accordance with Data Protection Act legislation in place from time to time.

11.14 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.

**Swanson Mackay & co ltd is a company registered in England & Wales with CRN
01849184**

All rights in relation to unauthorised usage of these terms and conditions are reserved