



## DEFINITIONS

In these General Conditions the following terms shall have the meaning set forth below.

**"Buyer"** means any person firm company or legal entity who has entered into a Contract with the Seller for purchase and supply of Deliverables.

**"Contract"** means an agreement entered into by the Buyer and the Seller for sale and supply of Deliverables, including the Seller's order confirmation, these General Conditions, any agreed specifications or any other agreement made in writing by the parties in relation to the Deliverables.

**"Deliverables"** shall mean the Goods and/or the Services, as applicable.

**"Goods"** shall mean the goods sold and/or delivered by the Seller to the Buyer under the Contract.

**"Production Part"** shall mean any Goods which has been signed-off for manufacture after Design Verification and Process Verification testing.

**"Prototype Part"** shall mean any Goods which is not a Production Part.

**"Seller"** shall mean the selling company on the documentation (quote, order confirmation or invoice) and shall be identified as Danecca Group Limited (14827922), Danecca Limited (08041334), Danecca Systems Limited (14829242) or Danecca Asset Management Limited (14848513), companies registered in England & Wales with registered offices at Unit 1142 Silverstone Park, Silverstone, NN12 8FU and includes all employees and agents of related Danecca companies.

**"Services"** means engineering, prototyping, testing, packing, storage and logistics services as well as any other services agreed between the parties to be sold and provided by the Seller to the Buyer under the Contract.

## APPLICABILITY

1. These General Conditions shall apply on all sales and supplies of Deliverables by the Seller to the Buyer. Deviations from these General Conditions shall not apply unless agreed specifically in writing by authorised representative of the Seller.

## ORDERS

2. No Contract shall be considered as entered into until an order confirmation has been provided from the Seller to the Buyer. If the Buyer does not accept the order confirmation it must immediately notify the Seller thereof in writing. If no such notification is given by the Buyer within two (2) business days, the Buyer is bound by the price and other conditions contained in the Seller's order confirmation.
3. Orders by the Buyer for Deliverables may not be subject to cancellations or changes without the Seller's written consent. The Seller reserves the right to charge the Buyer for any costs and expenses incurred in relation to cancellations or changes of orders requested by the Buyer.

## DELIVERY OF GOODS

4. The Buyer shall with due care make a customary inspection of the Goods upon delivery and notify the Seller in writing of any defects or shortcomings immediately and in no case later than five (5) business days after the delivery of the Goods. The notice shall contain a description of how the defect manifests itself. If the Buyer fails to notify the Seller of defects or shortcomings, which should reasonably have been discovered through customary inspection, in writing and within the above time limits, it loses its right to make any claim towards the Seller in respect of the defects or shortcomings.



5. Where a delivery term has been agreed in the Contract in relation to delivery of Goods, it shall be interpreted in accordance with the INCOTERMS in force at the formation of the Contract. If no trade term is specifically agreed, the delivery term shall be EXW (defined INCOTERMS 2012, as amended) to the place specified in the Seller's order confirmation.
6. Unless otherwise agreed in writing, the lead time stated in the Contract for delivery of Goods shall be taken as commencing on the date of the Contract. The date of delivery shall be taken as the date on which the Goods, according to the agreed delivery term, are to be regarded as handed over.

## PROVISION OF SERVICES

7. The Seller undertakes to provide the Services specified in the Contract during the service term and pursuant to the other terms and conditions set forth in the Contract.
8. The Seller shall use its reasonable endeavours to complete its obligations under the Contract, but time will not be of the essence in the performance of such obligations.
9. In case the Services include storage of property of the Seller on the Buyer's premises to which the Buyer shall have access, the Buyer is not entitled to make any modifications to the property of the Seller.
10. Such employees, representatives, agents, contractors etc. of the Buyer, as agreed in writing with the Seller at least five business days prior to the visit, ("Permitted Visitors") will during normal business hours of the Seller be permitted access to relevant facilities on the Seller's premises in relation to the provision of the Services. The Buyer shall procure that the Permitted Visitors undertake to at all times comply with the Seller's instructions.
11. In case Services are to be provided by the Seller at the Buyer's or a third party's premises, such employees, representatives, agents, contractors etc. of the Seller, as notified to the Buyer, shall be permitted access at the agreed time and place to relevant facilities at the Buyer's or third party's premises for the purpose of providing the Services. The Buyer is responsible for securing that such premises fulfill the requirements necessary for the provisions of the Services and otherwise comply with all applicable laws and regulations, including but not limited to work environment. Delay in providing the necessary requirements from the Buyer will be subject to reasonable compensation to the Seller.
12. Following the expiration or termination of the service term the Seller shall have no obligations towards the Buyer in relation to the provided Services.
13. Subject to clause 43, in case the Seller fails to carry out the Services in accordance with the Contract and does not remedy such failure within thirty (30) business days following the Buyer's written notice to the Seller specifying the failure in reasonable detail, the Seller undertakes, as exclusive and only remedy, to compensate the Buyer for direct damages it has suffered due to the failure, provided that the failure is not solely of a minor significance to the Buyer.
14. For the avoidance of doubt, the Seller has no liability for failure in providing the Services (including delay in delivery) to the extent the failure is directly or indirectly attributable to the Buyer (including its employees and representatives) or any third party engaged by the Buyer.
15. The Buyer agrees to defend, indemnify and hold harmless the Seller and its employees and representatives from and against any and all claims, loss, damage, cost or expense resulting from breach of or other non-compliance with applicable rules and regulations, the Seller's instructions in relation to Deliverables, or the general misuse of any Deliverables, including but not limited to,



death, personal injury, bodily injury and damage to property and the environment.

## PRICE

16. The applicable prices for the Deliverables are set forth in the Contract. All prices are net taxes, VAT, customs duties and other similar levies or costs, unless otherwise provided in the agreed delivery term or set forth in the Contract.
17. The Seller reserves the right, by giving written notice to the Buyer at any time before delivery or provision, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and Services which are requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

## PAYMENT

18. The Seller shall invoice the Buyer for the price of the Goods and Services on or at any time after delivery of the Goods and/or the Provision of the Services (as applicable), unless, in the case of Goods, the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
19. Payment terms: thirty (30) days net from the date of invoice.

20. Delayed payment shall carry penalty interest with 2% above the Bank of England Base Rate per month on any outstanding amount.
21. If the Buyer fails to pay by the due date, the Seller may suspend further performance of its contractual obligations until full payment of all outstanding invoices are made. If the Buyer has failed to pay the amount due within 60 days after the due date, the Seller may terminate the Contract by giving written notice to the Buyer. The Seller shall furthermore be entitled to full payment for the Deliverables even if it has not been delivered in full and, in addition, to interest on late payment as well as to claim compensation for all the losses suffered.

## RETENTION OF TITLE

22. The Goods shall remain the property of the Seller until paid for in full, to the extent that such retention of title is legally valid.

## ASSIGNMENT

23. The Seller may assign the Contract or any part of it to any person, firm or company without the prior consent of the Buyer.
24. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

## INTELLECTUAL PROPERTY

25. The intellectual property entailed in or related to the Deliverables shall at all times be the property of the Seller. Consequently, nothing in the Contract shall be construed as transferring any intellectual property in connection with the sale and delivery of the Deliverables. Consequently, the intellectual property entailed in the goods or in the solutions provided by the Seller will never



form part of a Contract and will thus always remain the sole property of the Seller, unless so expressly agreed in each individual case and the Buyer has paid separately and specifically for the specific intellectual property.

## DELAYED DELIVERY OF DELIVERABLES

26. If the Seller finds that it will not be able to meet the agreed delivery date in relation to the delivery of Deliverables it shall notify the Buyer thereof in writing, stating the cause of the delay and indicating the date on which it expects to be able to deliver.
27. Should a delivery or part-delivery of Deliverables be delayed because the Seller has materially neglected its obligations to begin work or to take other steps within such a time that it can effect delivery of the Deliverables by the due date, the Buyer shall be entitled to cancel the Contract upon giving written notice thereof to the Seller, although such cancellation may be resorted to only if the delay is of material significance to the Buyer and the Seller has realised or should have realised this. The Buyer may, regardless of the cause of the delay, not cancel a Contract if it has not objected to a prolonged delivery time upon receiving notice from the Seller in accordance with clause 26. If the Buyer has raised such objection, the Seller shall have reasonable time to deliver.
28. If the Buyer does not take delivery of the Goods on the agreed delivery date, the Buyer is liable for every cost, loss and expense incurred by the Seller as if the Goods in question had been delivered. The Seller shall, if the Goods is still in the hands of the Seller, arrange for the Goods to be stored at the Buyer's risk and expense. The Seller may also, at its sole discretion, terminate the Con-

tract and/or claim damages for cost, loss and expense suffered in relation hereto.

## LIABILITY FOR DEFECTS IN GOODS

29. The Seller undertakes to deliver the Goods in the condition agreed to between the parties.
30. Prototype Parts might include deviations in design, materials, workmanship and/or performance in relation to the specifications of the Production Parts for which the Seller assumes no liability in Prototype Parts.
31. The Seller undertakes to deliver Production Parts free from faulty design, materials and workmanship in relation to the specifications of the Production Parts.
32. The Production Parts shall be regarded as defective if not in compliance with clause 31. In case of defective Production Parts the Seller shall remedy the defect by way of (at the Seller's choice) either repairing or replacing the Production Parts at the Seller's own cost or by refunding the purchase price paid to the Seller for such defective Production Parts.
33. The Seller shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow the Seller's instructions (whether given orally or in writing), misuse or alteration of the Goods without the Seller's prior approval, or any other act or omission on the part of the Buyer, its employees or agents or any third party.
34. The Seller's liability for defects does not cover defects caused by circumstances, which arise after the risk has passed to the Buyer, nor does it cover normal wear and tear or deterioration. Furthermore, the Seller's liability does not cover defects due to mishandling, misuse or otherwise attributable to the Buyer or third parties.
35. The Seller's liability is limited to defects which appear within a period of three (3) months from the



date of delivery of the Goods, unless the Goods is intended to be used within a shorter period of time in which case the liability is limited to defects which appear within the intended period of use. For parts of the Goods, which have been repaired or replaced under clause [32](#), the Seller shall have the same liability for defects as for the original Goods for a period of three (3) months. For other parts of the Goods, the liability period referred to in the first sentence of this clause shall be extended only by the period during which the Goods could not be used due to a defect for which the Seller is liable. Regardless of the provisions of clauses [32-39](#), the Seller shall have no liability for defects in any part of the Goods or any claim, cost, damage or expense related thereto for more than two (2) years from the original delivery date. In addition, the Seller shall have no liability what so ever for any defects in any Goods or any claim, cost, damage or expense related thereto (i) if Goods is used outside of its specification and/or usage guidelines, (ii) if Goods in any way or part is used for or in applications for which the Goods is not originally intended, or (iii) the Goods in any other way is used in breach of the Seller's instructions or for any other purpose than the Goods was originally delivered for.

36. After receipt of a written notice under clause [4](#) for Production Parts, the Seller shall remedy the defect without undue delay. The Seller shall bear the costs as specified in clauses [32-39](#). Remedial work shall be carried out at a location of the Seller's choice. If the Buyer gives such notice as referred to in clause [4](#), and no defect is found for which the Seller is liable, the Seller shall be entitled to compensation for work and costs incurred as a result of the notice.
37. If remedy of the defect in the Goods requires intervention in other equipment than the Goods, the Buyer shall be responsible for any work or costs caused thereby.

38. All packaging, packing and transports in connection with repair or replacement of Goods shall be at the Buyer's risk and expense. The Buyer shall follow the Seller's instructions regarding how the transport shall be carried out.
39. No Goods may be returned to the Seller without the prior agreement in writing of the Seller.
40. The Seller shall have no liability for defects save as expressly set forth in clauses [32-39](#).

## LIMITATION OF LIABILITY

41. The Seller shall have no liability for damage to property or physical persons caused by any Deliverable. If a third party lodges a claim for compensation against the Seller or the Buyer for loss or damage referred to in this clause, the other party shall forthwith be notified thereof in writing.
42. It is acknowledged and agreed that the representations and warranties set forth in these General Conditions in relation to the sale and supply of the Deliverables are exclusive and in lieu of all warranties of quality and performance, written, oral or implied, whether in contract tort, negligence, strict liability or otherwise. All other representations or warranties, including but not limited to any future performance warranties and any implied warranties of merchantability and fitness for a particular purpose, are hereby disclaimed.
43. In no event shall the Seller be liable for any consequential or indirect damages, including, but not limited to, costs for third parties (e.g. end customers), loss of profit, loss of goodwill, cost of capital and costs incurred in connection with substitute sources of supply. Furthermore, in no event shall the aggregate liabilities of the Seller exceed the purchase price actually paid by the Buyer to the Seller with respect to the Deliverables in question.



## GROUND FOR RELIEF (FORCE MAJEURE)

44. The following circumstances shall constitute grounds for relief if they impede the performance of the Contract or makes performance unreasonably onerous and could not reasonably be foreseen: industrial disputes and any other circumstance beyond the control of the parties, such as fire, war, mobilisation or military call up of a comparable scope, requisition, seizure, trade and currency restrictions, insurrection and civil commotion, pandemics, shortage of transport, general shortage of materials, restrictions in the supply of power and defects or delays in deliveries by subcontractors caused by any such circumstance as referred to in this clause.
45. The party wishing to claim relief under clause 44 shall without delay notify the other party in writing on the intervention and on the cessation of such circumstance. If grounds for relief prevent the Buyer from fulfilling its obligations, the Buyer shall reimburse the expenses incurred by the Seller in securing and protecting the Goods.
46. Notwithstanding other provisions of these General Conditions, either party shall be entitled to terminate the Contract by notice in writing to the other party, if performance of the Contract is delayed more than twelve months by reason of any grounds for relief as described in clause 44.

## CONFIDENTIALITY

47. All information exchanged or otherwise transferred between the parties during the term of the Contract shall be treated as confidential, not be disclosed to any third parties, subject to clause 48 and only used for the purposes of the Contract.
48. The parties may disclose any Confidential Information to sub-contractors, suppliers, governmental or other authority or regulatory body to

such extent only as is necessary for the fulfilment of the Contract, or as required by law.

49. The provisions of clauses 47-48 shall continue in force for five (5) years after the term of the Contract notwithstanding the termination of the Contract for any reason.

## WAIVER

50. The parties agree that no failure by either Party to enforce the performance of any provision in these General Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

## SEVERANCE

51. The parties agree that, in the event that one or more of the provisions of these General Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these General Conditions (and, by extension, the Contract). The remainder of these and the Contract shall be valid and enforceable.

## THIRD PARTY RIGHTS

52. A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

## DISPUTES, APPLICABLE LAW

53. Disputes arising out of or in connection with the Contract shall not be brought before the court, but shall be finally settled by arbitration in accordance with the law on arbitration applicable in United Kingdom.



54. All disputes arising out of the Contract and that cannot be settled by arbitration shall be judged according to the laws of England, and parties hereby submit to the jurisdiction of the English Courts.

## **DATA PROTECTION**

55. Data subject to data protection laws may be provided by the Buyer to the Seller and will in such case be processed by the Seller in order to manage the existing business relationship between the Buyer and the Seller, to provide the Deliverables and related products and services, and for administrative and marketing purposes. The Seller shall only process the data in accordance with applicable law. Upon written request the Seller will correct any data that is incorrect, incomplete or misleading. The Seller will also, once per year and free of charge upon written request, give information on what personal data that is processed about the requesting registered company or person.
56. Should the Seller under applicable law be considered as a personal data processor on behalf of the Buyer, the Seller undertakes to take appropriate technical and organisational measures to protect the data as required by applicable law.



## INTERPRETATION

1. In these Conditions the following terms shall have the following meanings:

**Conditions** means the terms and conditions of purchase set out in this document and includes any special terms and conditions agreed in Writing and any agreed service level agreement between the Purchaser and the Supplier;

**Confidentiality Agreement** means the letter format confidentiality agreement that the Purchaser requires the Supplier to execute prior to the supply of Goods or services;

**Confidential Information** means all information (including, without limitation, Purchaser Materials) supplied by the Purchaser to the Supplier in respect of the subject matter of the Contract and including, without limitation, any information about the Purchaser and its business processes;

**Contract** means the contract for the purchase of the Goods and/or the provision of the Services;

**Discovery** means any invention, system, formula, method, process, know-how, improvement in design or procedure, drawing, design or photograph whether or not capable of patent, copyright, trademark or other protection in the United Kingdom or overseas;

**Force Majeure** means in relation to either party: any beyond a party's reasonable control including (without limitation) fire, strikes, lock-outs, labour disputes, compliance with any law or governmental order, rule, regulation or direction;

**Goods** means the goods (including any instalment of the goods or any part of them) described in the Order;

**"GSP Certificates"** means the country of origin certification enabling the reduction or elimination of import duty;

**INCOTERMS** means the international rules for the interpretation of trade terms of the International Chamber of Commerce, 2020;

**Intellectual Property Rights** means all copyright, design rights, patents and/or unregistered rights of a similar nature in respect of the Goods and/or Services and/or the Output Materials;

**Order** means the Purchaser's purchase order in respect of the Goods (as each order is referenced by a unique part or component number) (for the avoidance of doubt however, where orders for such Goods which are referenced by part or component numbers have multiple delivery dates which delivery dates have reference numbers, any delivery date reference numbers shall not, themselves, constitute a separate Order);

**Output Materials** means any and all works of authorship and materials (including, without limitation, computer software) (including copies) developed, written or prepared by the Supplier, its employees, agents or sub-contractors in relation to the Goods and/or Services;

**Packaging Guidelines** means the Purchaser's packaging guidelines which are available on request and which may be updated from time to time;

**Purchaser** means the purchasing company on the purchase order and shall be identified as Danecca Group Limited (14827922), Danecca Limited (08041334), Danecca Systems Limited (14829242) or Danecca Asset Management Limited (14848513) or any Associated Company ("Associated Company" means any subsidiary, group or holding company of the Purchaser or subsidiary of any holding company and the terms "group company", "holding" and "subsidiary" shall have the meanings given to them under sections 736 and 736A Companies Act 1985) and includes all employees and agents of related Danecca companies

**Purchaser Materials** means any Specification or other information and materials supplied by the Purchaser to the Supplier;





**Services** means the services (if any) described in the Order;

**Spares** means the Goods and any replacement parts for the same as those Goods and replacement parts are to be held in accordance with clauses 41 to 47;

**Specification** includes any plans, drawings, artwork, data (including, without limitation, engineering CAD files in whatever media) or other information relating to the Goods or Services;

**Supplier** means the person so described in the Order;

**Working Days** means Monday to Friday excluding, subject to periodic notification, Bank Holidays and other public holidays in England;

**VAT** means value added tax or other similar duties or sales taxes which may be applicable;

**Writing** includes facsimile transmission, email and other comparable means of communication.

- Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## BASIS OF PURCHASE

- The Order constitutes an offer by the Purchaser to purchase the Goods and/or the Services subject to these Conditions. The Supplier will be deemed to have accepted any Order which has been made or confirmed in Writing seven (7) Working Days from the date on the Order or upon expiry of seven (7) days from the time of dispatch by the Purchaser of the relevant document unless notification in Writing has been received by the Purchaser within that time of the Supplier's inability to comply with the Order. These Conditions shall apply to the Contract to the exclusion of any other terms and conditions.
- No variation to the Order (including, without limitation, delivery date and quantity) shall be bind-

ing unless agreed in Writing between the authorised representatives of the Purchaser and the Supplier. No variation to these conditions shall be binding unless agreed in Writing between a Director of the Purchaser and an authorised representative of the supplier. Only orders placed on the Purchaser's official Order forms will be binding. If there is any inconsistency or conflict between any special terms set out in the Order and the main body of these Conditions, the special terms set out in the Order shall prevail. These Conditions shall apply to all future Contracts with the Supplier.

- Directors of the Purchaser alone are authorised to make representations on behalf of the Purchaser in respect of matters to which the Contract relates and such representations must be made in Writing to bind the Purchaser. Any other representations (whether oral or written) made by or on behalf of the Purchaser prior to the date of the Contract are withdrawn.

## SPECIFICATIONS

- The quantity, quality and description of the Goods and any Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Purchaser to the Supplier or agreed in Writing by the Purchaser.
- Save for compliance with each Order, the Supplier does not have authority to incur any expense whatsoever for the account of the Purchaser without the Written consent of the Purchaser.

## VARIATIONS AND CANCELLATION OF ORDERS

- if the Purchaser's process of manufacture is stopped, delayed or impeded by an event of



Force Majeure or any other cause beyond the control of the Purchaser any Order under this Contract may be modified or cancelled by the Purchaser as regards such part as has not been executed by delivery or performance. In such event the Purchaser shall not (save as provided in clause 9) be under any liability to the Supplier by reason of such modification or cancellation.

9. The Purchaser shall pay, at the Contract price, for any work or manufacture completed under this Contract prior to the date of modification or cancellation pursuant to clause 8 in accordance with the provisions of clauses 8 to 10. The Purchaser may either: pay pro rata for any work or manufacture partially completed under this Contract prior to the date of cancellation or modification; or instruct the Supplier to complete the work or manufacture of those Goods and/or supply of Services in accordance with this Contract and then pay the price if the Supplier can prove to the Purchaser's reasonable satisfaction that raw materials have been purchased or irrevocably allocated to the Purchaser for the purposes of this Contract prior to the date of modification or cancellation.
10. Except as indicated above the Purchaser shall not be liable for any losses, costs or claims of the Supplier arising out of the Purchaser's modification or cancellation.

## PRICE OF THE GOODS AND SERVICES

11. The price of the Goods and the Services shall, unless otherwise agreed in Writing, be in the currency as stated in the Order. The price shall be exclusive of any applicable VAT (which shall be clearly shown as a separate item on a VAT invoice) and inclusive of all charges which the Supplier is liable to pay under the INCOTERM noted in the Order (or, if no INCOTERM is stated in any Order and unless otherwise agreed in writing, inclu-

sive of all charges for packaging, packing, shipping, carriage, royalties, insurance, delivery and unloading of the Goods at the delivery address and any duties or levies other than value added tax). The Supplier shall ensure that, where applicable and/or possible, it has obtained GSP Certificates in respect of the Goods.

12. No increase in the price may be made without the Written consent of the Purchaser.
13. The Supplier shall charge the same prices to each of the Purchaser's Associated Companies, Subsidiaries and/or Holding Companies (as the same are defined at clause 1 above).

## TERMS OF PAYMENT

14. Invoices shall be rendered following the delivery of the Goods or performance of the Services. The following information must be shown clearly on all invoices; the Purchaser's Order number, the order line reference; the unique part or component numbers in respect of the Goods; the delivery note number; the Supplier's VAT number; each item of the Goods shown separately.
15. Unless otherwise agreed in writing by the Purchaser, the Purchaser shall pay the price of the Goods and the Services within 60 days after the end of the month of receipt by the Purchaser of a proper and accurate invoice or, if later, after acceptance of the Goods or Services in question by the Purchaser (in accordance with the provisions of clauses 17 to 23). Any advance payment made by the Purchaser at the Supplier's request shall be held by the Supplier as part payment and not as a deposit.
16. The Purchaser may set off against the price any sums owed to the Purchaser by the Supplier and may deduct from the price any sums required to be deducted by law.



## DELIVERY AND ACCEPTANCE

17. Unless otherwise agreed in Writing, the Goods shall be delivered to and the Services shall be performed at the address and on the date or dates stated in the Order. If the Goods are to be held to the Purchaser's order under any 'call-off' arrangements, the Goods shall be delivered in accordance with those call-off arrangements. The time of delivery of the Goods and of performance of the Services is of the essence of the Contract. An advice note containing the Purchaser's Order number for those Goods shall be included in each consignment of Goods. The Supplier shall promptly obtain all import and export licences it may need to deliver the Goods in accordance with this Contract. The Supplier shall ensure that it complies with the Purchaser's Packaging Guidelines. Without prejudice to its other rights and remedies, the Purchaser may reject any Goods which, in the Purchaser's sole opinion, are loaded in an unsafe manner.
18. The Supplier shall provide the Purchaser with all information, assistance and equipment reasonably necessary for the purposes of safely and effectively unloading Goods at the Premises (including, without limitation, prior written notice of hazardous content and any specific handling and/or storage requirements).
19. If the Contract is for the delivery of Goods by instalments, then if the Supplier fails to deliver one or more instalment the Purchaser may terminate or suspend the Contract and/or reject these or subsequent deliveries.
20. If the Supplier fails to supply any Order for Goods, the Purchaser may reject the Goods and, at its sole option, terminate the Contract and any other Contract which the Purchaser may have with the Supplier.
21. The Purchaser may reject any Goods delivered or Services supplied, which are not in accordance with the Contract (including, without limitation, and under or over delivery), and shall (notwithstanding delivery of the Goods and/or Services) not be deemed to have accepted any Goods or Services until the Purchaser has had a reasonable time to inspect them following delivery or completion or, if later, within a reasonable time after any latent defect in the Goods or Services has become apparent. Any testing of Goods and/or Services by the Purchaser shall not relieve the Supplier of its responsibilities to ensure that the Goods and/or Services (whether supplied by the Supplier or any relevant sub-contractor) comply with the Contract.
22. The Purchaser shall not be required to pay for or to return to the Supplier any rejected Goods. On rejection title and risk shall immediately revert to the Supplier and the Purchaser shall not be responsible for their safekeeping.
23. If the Contract requires the Supplier to perform any Services at the Purchaser's premises or other point of delivery of the Goods then the Supplier shall comply with all applicable governmental and works regulations and the Purchaser's health and safety and other site policies and shall indemnify the Purchaser against any loss, damage or liability arising from any breach of these.

## RISK AND PROPERTY

24. Subject to clause 21, risk of damage to or loss of the Goods shall not pass to the Purchaser until delivery to the Purchaser in accordance with the Contract.
25. Subject to clause 21, the property in the Goods shall pass to the Purchaser upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Purchaser once payment has been made.



## WARRANTIES AND LIABILITY

26. Without prejudice to any conditions implied by law, the Supplier warrants to the Purchaser that the Goods:
- 26.1 will be of satisfactory quality and fit for the Purchaser's purpose. If the Supplier has any doubt for the purpose for which the Purchaser requires the Goods it must seek clarification from the Purchaser before entering into the Contract;
  - 26.2 will be free from defects in design, material and workmanship and the Supplier shall indemnify the Purchaser against all costs, claims and damages (whether direct or indirect) which it may incur in respect of the Purchaser's possession, use or onward supply of the Goods which shall include, without limitation, circumstances where the Purchaser has to replace at its own expense defective Goods or other articles incorporating the Goods or any part of the Goods under any warranty the Purchaser has given or under any arrangements made with the Department of Transport or equivalent Department of any foreign governments (or any other UK or foreign government department) to carry out a recall campaign and to replace such Goods or other articles incorporating the Goods or any part of the Goods as may be specified in the campaign;
  - 26.3 will be free from any third-party lien, claim, title or interest;
  - 26.4 will correspond with any relevant Specification, prototypes, proofs or samples (whether supplied by the Purchaser or the Supplier); and
  - 26.5 will comply with all statutory requirements and regulations relating to the Goods.
27. The Supplier warrants to the Purchaser that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence, in accordance with all relevant laws and to such high standard of quality as it is reasonable for the Purchaser to expect in all the circumstances.
28. Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Purchaser may:
- 28.1 require the Supplier to repair the Goods or to supply replacement Goods or re-perform the Services in accordance with the Contract within the timescale which the Purchaser notifies to the Supplier; or
  - 28.2 at the Purchaser's sole option, and whether or not the Purchaser has previously required the supplier to repair the Goods or to supply any replacement Goods or re-perform the Services, to treat the Contract as discharged by the Suppliers breach and require the repayment of any part of the price which has been paid.
29. The Supplier shall indemnify the Purchaser in full against all liability, loss (including loss of profit), damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Purchaser as a result of or in connection with:
- 29.1 breach of any term of the Contract or any warranty given by the Supplier in relation to the Goods or the Services;
  - 29.2 any claims, demands, proceedings or actions that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Purchaser;
  - 29.3 any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods or carrying out the Services, including death



and injury to person and damage to property caused directly or indirectly by negligence or breach of statutory duty of the Supplier or subcontractor; and

- 29.4 any act or omission of any of the supplier's personnel in connection with the performance of the Services.
30. The Supplier will at the Purchaser's request, but at the Supplier's expense, assist the Purchaser to defend any action brought against the Purchaser in consequence of any matter referred to in clause 9.4 above (with the Supplier being the lead party in defending all such matters).
31. The Supplier shall effect and maintain the following insurances:
- 31.1 employer's liability Insurance to a minimum cover of £10,000,000 in respect of each claim and unlimited in the aggregate;
- 31.2 public liability Insurance with an indemnity of at least £10,000,000 in respect of any one claim or number of claims arising out of one cause, the total of claims to be unlimited in any one period of insurance and unlimited in the aggregate; and
- 31.3 product liability insurance with an indemnity of at least £5,000,000 in respect of any one claim or number of claims arising out of one cause, the total of claims to be unlimited in any one period of insurance;
- 31.4 such other insurances which ensure that all of the Supplier's liabilities under these Conditions are properly insured;
32. The policies shall be endorsed to indemnify the Purchaser (or, if the Supplier is notified by the Purchaser in Writing, any Associated Company) as principal, and the Supplier shall forward the policies for these insurances for examination by the Purchaser within one week of the Purchaser's request.

## TERMINATION

33. The Purchaser may terminate the Contract without liability to the Supplier by giving notice to the Supplier at any time if:
- 33.1 the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes bankrupt or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 33.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or
- 33.3 the Supplier ceases, or threatens to cease, to carry on business or ceases to be able to fulfil this Contract;
- 33.4 the Supplier refuses or is unable to meet sums due to the Purchaser when such sums fall due;
- 33.5 the Supplier suffers any similar or analogous action in any jurisdiction; or
- 33.6 the Purchaser reasonably apprehends that any of the foregoing events is about to occur in relation to the Supplier and notifies the Supplier accordingly.
34. Following termination, the Supplier shall cooperate with the Purchaser to affect any alternative requirements of the Purchaser in respect of the supply of the Goods and/or Services by a third-party supplier, including, without limitation, the transfer of any Output Materials, Specification or other documentation to the Purchaser or, at the Purchaser's request, the third-party supplier.

## CONFIDENTIALITY

35. The Supplier shall maintain secret and confidential the Confidential Information and all other information obtained from the Purchaser either



pursuant to these Conditions or prior to and in contemplation of it in accordance with the Confidentiality Agreement.

## **OWNERSHIP OF PURCHASER MATERIALS AND INTELLECTUAL PROPERTY**

36. Where the Purchaser supplies any Purchaser Materials, then:
- 36.1 all intellectual property and proprietary rights in the Purchaser Materials shall remain the Purchaser's exclusive property;
  - 36.2 the Purchaser Materials shall not (save as agreed by the Purchaser in Writing) be used or disclosed by the Supplier for any purpose other than the performance of the Supplier's obligations under this contract;
  - 36.3 the Supplier shall label the Purchaser Materials as the Purchaser's property and keep the Purchaser Materials separate from its own property;
  - 36.4 the Supplier shall return the Purchaser Materials to the Purchaser forthwith if this Contract is terminated or on demand at any time and the Purchaser may at any time enter the Supplier's premises to inspect or remove the Purchaser Materials;
  - 36.5 no term condition or warranty (whether express or implied) as to the nature, quality or fitness of the Materials or their conformity to any sample or description shall form part of, or be a collateral term of any contract between the parties. The Supplier is responsible for determining whether the Materials are suitable for use in connection with the supply of the Goods; and
  - 36.6 the Supplier shall indemnify the Purchaser against waste of Purchaser Materials caused by the Supplier's negligence or poor workmanship.
37. The Purchaser shall be entitled to such Intellectual Property Rights as may exist in the Output Materials. The Seller assigns to the Buyer all such Intellectual Property with the intention that it shall vest in the Buyer upon the delivery of the Goods, the supply of the Services or, if earlier, the creation of each of the Output Materials.
38. The Seller shall do all such things and execute all such documents as may reasonably be required by the Buyer to ensure the vesting in the Buyer of the Intellectual Property rights referred to in clause 37 above.
39. The Supplier shall promptly disclose to the Purchaser (and to no one else) full details of any Discovery (including designs, formulae and working papers) it conceives, makes or improves pursuant to the Contract.
40. The Supplier agrees that any Discovery shall be the exclusive property of the Purchaser, and that it shall:
- 40.1 treat all information connected with the Discovery as Confidential Information and will not without the Purchaser's prior Written consent disclose it or exploit it for its own or any third party's gain;
  - 40.2 co-operate with the Purchaser at its expense in order to vest full right, title and interest in the Discovery in the Purchaser or as it may direct as sole legal and beneficial owner; and
  - 40.3 co-operate with the Purchaser at its expense in order to secure and maintain patent, copyright, design, trademark or any other protection for the Discovery in any country. The Supplier irrevocably appoints the Purchaser to be its attorney with full authority to execute any document, take any action and use its name for the purpose of giving the Purchaser the full benefit of the provisions of this condition. The Supplier warrants that it will not at any time be under any obligation to a third party regarding a Discovery.



## SPARES

41. The Supplier shall maintain a supply of Spares or replacement parts for the Goods for a period of 10 years from the last delivery date of the Goods, such Spares or replacement parts to be fully compatible with Goods previously supplied.
42. If during this period of 10 years the Supplier intends to discontinue the manufacture of Spare or replacement parts for the Goods the Supplier shall forthwith give notice to the Purchaser of such intention and give the Purchaser the opportunity (which shall be exercised within three months) of ordering at reasonable prices such quantities of Spares or replacement parts as the Purchaser shall require in relation to the anticipated life of the Goods.
43. If during the period of 10 years, the Supplier (in the absence of agreement) either:
  - 43.1 fails to fulfil an order for the supply of Spare or replacement parts given by the Purchaser;
  - 43.2 fails to make available to the Purchaser with reasonable despatch and at reasonable prices all such Spares or replacement parts as the Purchaser shall require for the Goods; or
  - 43.3 any of the events in 33 to 34 occurs;then the Supplier shall forthwith deliver to the Purchaser free of charge such drawings, patterns, specifications and other information as are required by the Purchaser (and it does not already own) to enable it to manufacture Spares for the Goods. The Purchaser shall be entitled to retain such material for such time as is necessary for the exercise by the Purchaser of its rights under this clause and, if the Supplier so requires, shall be returned by the Purchaser to the Supplier in good order and condition (fair wear and tear excepted) at the Purchaser's cost and expense
44. If the Purchaser exercises its rights under clauses 42 or 43 the Supplier shall also grant to the Purchaser without payment of any royalty or charge full right and licence to make or have made Spares or replacement parts for the Goods and for such purposes only to use, make and have made copies of all drawings, patterns, specifications and other information supplied by the Supplier to the Purchaser pursuant to the Contract and which the Purchaser does not already own.
45. The Purchaser undertakes that all drawings, patterns, specifications and other information obtained from the Supplier under this clause shall be kept confidential and will only be divulged as may be necessary for the purpose of making or having made Spares or replacement parts for the Goods.
46. The Supplier will use its best endeavors to bind its own suppliers to conform with the requirements of clauses 41 to 47 and will, prior to entry into any such sub-contract, provide the Purchaser with full details of any supplier who will not so conform in which event the Purchaser may direct the Supplier to seek an alternative supplier. Any additional costs incurred by the Supplier in placing any such sub-contract with an alternative supplier shall be added to the Contract price.
47. If the Supplier fails to provide Spares or replacement parts as described in 41. and these are available from a supplier, the Purchaser shall have the right to obtain such Spares and replacement parts from the supplier and any additional cost incurred by the Purchaser shall be recoverable from the Supplier.

## EQUIPMENT

48. If the Purchaser pays for or contributes to the cost of equipment required to enable the Supplier to perform its obligations under this Contract, the Supplier shall give written notice of this to the Purchaser. The Purchaser may purchase



full ownership of any such equipment on giving reasonable notice and, where the Purchaser has not already paid in full, payment of the difference (if any) between the amount already paid for towards or attributed to that equipment and the price the Supplier paid for it.

49. The Supplier shall, at its own expense, maintain all the equipment referred to in clauses 48 to 50 in first class condition subject to fair wear and tear and immediately replace any items lost or destroyed. The Supplier shall not sell any of the equipment referred to in this clauses 48 to 50 without the prior written consent of the Purchaser and shall maintain all risks insurance for such equipment with a reputable insurance company at all times for the full replacement value.
50. Where any Order from the Purchaser requires the Supplier to purchase and/or manufacture any tooling and/or other equipment ("Tooling") and the Purchaser has agreed in Writing to pay for some or all of the purchase cost of Tooling, the timing of staged payments for the Tooling shall, unless otherwise agreed in writing by the parties, be as follows:
- 50.1 ten per cent (10%) of the price shall be payable by the Purchaser on the Supplier's acceptance of the relevant Order;
- 50.2 twenty per cent (20%) of the price shall be payable by the Purchaser on the submission by the Supplier of the initial sample inspection report ("ISIR") sample;
- 50.3 thirty per cent (30%) of the price shall be payable by the Purchaser on the approval by the Purchaser of the ISIR sample; and
- 50.4 forty per cent (40%) of the price shall be payable by the Purchaser following the acceptance by the Purchaser of the production batch of the relevant Goods.

## GENERAL

51. The Purchaser (or its duly authorised agent) may, upon giving not less than 2 Working Days written notice, audit the Supplier at its premises in respect of all records, accounts and Goods and Services to be supplied or held on behalf of the Purchaser (including, without limitation, inspection of the production process). If the Purchaser notifies the Supplier of any changes, additions, modifications or improvements which are required to enable the Goods to conform to the Purchaser's quality assurance requirements in force from time to time or to the Contract then they shall be carried out by the Supplier without delay prior to delivery.
52. The Purchaser may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group and/or Associated Company.
53. The Contract is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract unless otherwise agreed in Writing with the Purchaser. The Supplier shall remain liable for all acts and/or omissions of any subcontractor.
54. The Supplier shall not use the Purchaser's name in any publicity or advertising material without the prior Written consent of the Purchaser as to both the use of its name and the nature and form of the publicity or advertising.
55. During the period of the Contract and for a period of 12 months after its termination, the Supplier together with its agents, servants and Associated Companies will neither directly or indirectly offer employment to or actually employ any of the Purchaser's employees. The Supplier agrees that in the event of it being in breach of this condition it shall make a payment to the Purchaser within seven days of any breach of 33%





of the employees' final annual salary. This condition 55 shall only apply in respect of the non-solicitation of those of the Purchaser's employees who have come into to contact with the Supplier pursuant to this Contract.

56. Any notice required or permitted to be given by either party to the other under these Conditions 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. All notices must be given in the English language or, if given in a language other than English, an English translation must be provided. If there is any conflict between the translation of the notice and the original notice, the translation of the notice shall prevail.
57. No waiver by the Purchaser of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.
58. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
59. Save that any Associated Company (as defined in condition 1 above) of the Purchaser may enforce the provisions of the Contract, a person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
60. The Contract shall be governed by the laws of England, and the Supplier agrees to submit to the non-exclusive jurisdiction of the English courts.



## INTERPRETATION

1. In these Conditions the following terms shall have the following meanings:

**Conditions** means the terms and conditions of purchase set out in this document and includes any special terms and conditions agreed in Writing and any agreed service level agreement between the Purchaser and the Supplier;

**Confidentiality Agreement** means the letter format confidentiality agreement that the Purchaser requires the Supplier to execute prior to the supply of Goods or services;

**Confidential Information** means all information (including, without limitation, Purchaser Materials) supplied by the Purchaser to the Supplier in respect of the subject matter of the Contract and including, without limitation, any information about the Purchaser and its business processes;

**Contract** means the contract for the purchase of the Goods and/or the provision of the Services;

**Discovery** means any invention, system, formula, method, process, know-how, improvement in design or procedure, drawing, design or photograph whether or not capable of patent, copyright, trademark or other protection in the United Kingdom or overseas;

**Force Majeure** means in relation to either party: any beyond a party's reasonable control including (without limitation) fire, strikes, lock-outs, labour disputes, compliance with any law or governmental order, rule, regulation or direction;

**Goods** means the goods (including any instalment of the goods or any part of them) described in the Order;

**"GSP Certificates"** means the country of origin certification enabling the reduction or elimination of import duty;

**INCOTERMS** means the international rules for the interpretation of trade terms of the International Chamber of Commerce, 2020;

**Intellectual Property Rights** means all copyright, design rights, patents and/or unregistered rights of a similar nature in respect of the Goods and/or Services and/or the Output Materials;

**Order** means the Purchaser's purchase order in respect of the Goods (as each order is referenced by a unique part or component number) (for the avoidance of doubt however, where orders for such Goods which are referenced by part or component numbers have multiple delivery dates which delivery dates have reference numbers, any delivery date reference numbers shall not, themselves, constitute a separate Order);

**Output Materials** means any and all works of authorship and materials (including, without limitation, computer software) (including copies) developed, written or prepared by the Supplier, its employees, agents or sub-contractors in relation to the Goods and/or Services;

**Packaging Guidelines** means the Purchaser's packaging guidelines which are available on request and which may be updated from time to time;

**Purchaser** means the purchasing company on the purchase order and shall be identified as Danecca Group Limited (14827922), Danecca Limited (08041334), Danecca Systems Limited (14829242) or Danecca Asset Management Limited (14848513) or any Associated Company ("Associated Company" means any subsidiary, group or holding company of the Purchaser or subsidiary of any holding company and the terms "group company", "holding" and "subsidiary" shall have the meanings given to them under sections 736 and 736A Companies Act 1985) and includes all employees and agents of related Danecca companies

**Purchaser Materials** means any Specification or other information and materials supplied by the Purchaser to the Supplier;



**Services** means the services (if any) described in the Order;

**Spares** means the Goods and any replacement parts for the same as those Goods and replacement parts are to be held in accordance with clauses 41 to 47;

**Specification** includes any plans, drawings, artwork, data (including, without limitation, engineering CAD files in whatever media) or other information relating to the Goods or Services;

**Supplier** means the person so described in the Order;

**Working Days** means Monday to Friday excluding, subject to periodic notification, Bank Holidays and other public holidays in England;

**VAT** means value added tax or other similar duties or sales taxes which may be applicable;

**Writing** includes facsimile transmission, email and other comparable means of communication.

- Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## BASIS OF PURCHASE

- The Order constitutes an offer by the Purchaser to purchase the Goods and/or the Services subject to these Conditions. The Supplier will be deemed to have accepted any Order which has been made or confirmed in Writing seven (7) Working Days from the date on the Order or upon expiry of seven (7) days from the time of dispatch by the Purchaser of the relevant document unless notification in Writing has been received by the Purchaser within that time of the Supplier's inability to comply with the Order. These Conditions shall apply to the Contract to the exclusion of any other terms and conditions.
- No variation to the Order (including, without limitation, delivery date and quantity) shall be bind-

ing unless agreed in Writing between the authorised representatives of the Purchaser and the Supplier. No variation to these conditions shall be binding unless agreed in Writing between a Director of the Purchaser and an authorised representative of the supplier. Only orders placed on the Purchaser's official Order forms will be binding. If there is any inconsistency or conflict between any special terms set out in the Order and the main body of these Conditions, the special terms set out in the Order shall prevail. These Conditions shall apply to all future Contracts with the Supplier.

- Directors of the Purchaser alone are authorised to make representations on behalf of the Purchaser in respect of matters to which the Contract relates and such representations must be made in Writing to bind the Purchaser. Any other representations (whether oral or written) made by or on behalf of the Purchaser prior to the date of the Contract are withdrawn.

## SPECIFICATIONS

- The quantity, quality and description of the Goods and any Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Purchaser to the Supplier or agreed in Writing by the Purchaser.
- Save for compliance with each Order, the Supplier does not have authority to incur any expense whatsoever for the account of the Purchaser without the Written consent of the Purchaser.

## VARIATIONS AND CANCELLATION OF ORDERS

- if the Purchaser's process of manufacture is stopped, delayed or impeded by an event of



Force Majeure or any other cause beyond the control of the Purchaser any Order under this Contract may be modified or cancelled by the Purchaser as regards such part as has not been executed by delivery or performance. In such event the Purchaser shall not (save as provided in clause 9) be under any liability to the Supplier by reason of such modification or cancellation.

9. The Purchaser shall pay, at the Contract price, for any work or manufacture completed under this Contract prior to the date of modification or cancellation pursuant to clause 8 in accordance with the provisions of clauses 8 to 10. The Purchaser may either: pay pro rata for any work or manufacture partially completed under this Contract prior to the date of cancellation or modification; or instruct the Supplier to complete the work or manufacture of those Goods and/or supply of Services in accordance with this Contract and then pay the price if the Supplier can prove to the Purchaser's reasonable satisfaction that raw materials have been purchased or irrevocably allocated to the Purchaser for the purposes of this Contract prior to the date of modification or cancellation.
10. Except as indicated above the Purchaser shall not be liable for any losses, costs or claims of the Supplier arising out of the Purchaser's modification or cancellation.

## PRICE OF THE GOODS AND SERVICES

11. The price of the Goods and the Services shall, unless otherwise agreed in Writing, be in the currency as stated in the Order. The price shall be exclusive of any applicable VAT (which shall be clearly shown as a separate item on a VAT invoice) and inclusive of all charges which the Supplier is liable to pay under the INCOTERM noted in the Order (or, if no INCOTERM is stated in any Order and unless otherwise agreed in writing, inclu-

sive of all charges for packaging, packing, shipping, carriage, royalties, insurance, delivery and unloading of the Goods at the delivery address and any duties or levies other than value added tax). The Supplier shall ensure that, where applicable and/or possible, it has obtained GSP Certificates in respect of the Goods.

12. No increase in the price may be made without the Written consent of the Purchaser.
13. The Supplier shall charge the same prices to each of the Purchaser's Associated Companies, Subsidiaries and/or Holding Companies (as the same are defined at clause 11 above).

## TERMS OF PAYMENT

14. Invoices shall be rendered following the delivery of the Goods or performance of the Services. The following information must be shown clearly on all invoices; the Purchaser's Order number, the order line reference; the unique part or component numbers in respect of the Goods; the delivery note number; the Supplier's VAT number; each item of the Goods shown separately.
15. Unless otherwise agreed in writing by the Purchaser, the Purchaser shall pay the price of the Goods and the Services within 60 days after the end of the month of receipt by the Purchaser of a proper and accurate invoice or, if later, after acceptance of the Goods or Services in question by the Purchaser (in accordance with the provisions of clauses 17 to 23). Any advance payment made by the Purchaser at the Supplier's request shall be held by the Supplier as part payment and not as a deposit.
16. The Purchaser may set off against the price any sums owed to the Purchaser by the Supplier and may deduct from the price any sums required to be deducted by law.



## DELIVERY AND ACCEPTANCE

17. Unless otherwise agreed in Writing, the Goods shall be delivered to and the Services shall be performed at the address and on the date or dates stated in the Order. If the Goods are to be held to the Purchaser's order under any 'call-off' arrangements, the Goods shall be delivered in accordance with those call-off arrangements. The time of delivery of the Goods and of performance of the Services is of the essence of the Contract. An advice note containing the Purchaser's Order number for those Goods shall be included in each consignment of Goods. The Supplier shall promptly obtain all import and export licences it may need to deliver the Goods in accordance with this Contract. The Supplier shall ensure that it complies with the Purchaser's Packaging Guidelines. Without prejudice to its other rights and remedies, the Purchaser may reject any Goods which, in the Purchaser's sole opinion, are loaded in an unsafe manner.
18. The Supplier shall provide the Purchaser with all information, assistance and equipment reasonably necessary for the purposes of safely and effectively unloading Goods at the Premises (including, without limitation, prior written notice of hazardous content and any specific handling and/or storage requirements).
19. If the Contract is for the delivery of Goods by instalments, then if the Supplier fails to deliver one or more instalment the Purchaser may terminate or suspend the Contract and/or reject these or subsequent deliveries.
20. If the Supplier fails to supply any Order for Goods, the Purchaser may reject the Goods and, at its sole option, terminate the Contract and any other Contract which the Purchaser may have with the Supplier.
21. The Purchaser may reject any Goods delivered or Services supplied, which are not in accordance with the Contract (including, without limitation, and under or over delivery), and shall (notwithstanding delivery of the Goods and/or Services) not be deemed to have accepted any Goods or Services until the Purchaser has had a reasonable time to inspect them following delivery or completion or, if later, within a reasonable time after any latent defect in the Goods or Services has become apparent. Any testing of Goods and/or Services by the Purchaser shall not relieve the Supplier of its responsibilities to ensure that the Goods and/or Services (whether supplied by the Supplier or any relevant sub-contractor) comply with the Contract.
22. The Purchaser shall not be required to pay for or to return to the Supplier any rejected Goods. On rejection title and risk shall immediately revert to the Supplier and the Purchaser shall not be responsible for their safekeeping.
23. If the Contract requires the Supplier to perform any Services at the Purchaser's premises or other point of delivery of the Goods then the Supplier shall comply with all applicable governmental and works regulations and the Purchaser's health and safety and other site policies and shall indemnify the Purchaser against any loss, damage or liability arising from any breach of these.

## RISK AND PROPERTY

24. Subject to clause 21, risk of damage to or loss of the Goods shall not pass to the Purchaser until delivery to the Purchaser in accordance with the Contract.
25. Subject to clause 21, the property in the Goods shall pass to the Purchaser upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Purchaser once payment has been made.



## WARRANTIES AND LIABILITY

26. Without prejudice to any conditions implied by law, the Supplier warrants to the Purchaser that the Goods:
- 26.1 will be of satisfactory quality and fit for the Purchaser's purpose. If the Supplier has any doubt for the purpose for which the Purchaser requires the Goods it must seek clarification from the Purchaser before entering into the Contract;
  - 26.2 will be free from defects in design, material and workmanship and the Supplier shall indemnify the Purchaser against all costs, claims and damages (whether direct or indirect) which it may incur in respect of the Purchaser's possession, use or onward supply of the Goods which shall include, without limitation, circumstances where the Purchaser has to replace at its own expense defective Goods or other articles incorporating the Goods or any part of the Goods under any warranty the Purchaser has given or under any arrangements made with the Department of Transport or equivalent Department of any foreign governments (or any other UK or foreign government department) to carry out a recall campaign and to replace such Goods or other articles incorporating the Goods or any part of the Goods as may be specified in the campaign;
  - 26.3 will be free from any third-party lien, claim, title or interest;
  - 26.4 will correspond with any relevant Specification, prototypes, proofs or samples (whether supplied by the Purchaser or the Supplier); and
  - 26.5 will comply with all statutory requirements and regulations relating to the Goods.
27. The Supplier warrants to the Purchaser that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence, in accordance with all relevant laws and to such high standard of quality as it is reasonable for the Purchaser to expect in all the circumstances.
28. Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Purchaser may:
- 28.1 require the Supplier to repair the Goods or to supply replacement Goods or re-perform the Services in accordance with the Contract within the timescale which the Purchaser notifies to the Supplier; or
  - 28.2 at the Purchaser's sole option, and whether or not the Purchaser has previously required the supplier to repair the Goods or to supply any replacement Goods or re-perform the Services, to treat the Contract as discharged by the Suppliers breach and require the repayment of any part of the price which has been paid.
29. The Supplier shall indemnify the Purchaser in full against all liability, loss (including loss of profit), damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Purchaser as a result of or in connection with:
- 29.1 breach of any term of the Contract or any warranty given by the Supplier in relation to the Goods or the Services;
  - 29.2 any claims, demands, proceedings or actions that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Purchaser;
  - 29.3 any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods or carrying out the Services, including death



and injury to person and damage to property caused directly or indirectly by negligence or breach of statutory duty of the Supplier or subcontractor; and

- 29.4 any act or omission of any of the supplier's personnel in connection with the performance of the Services.
30. The Supplier will at the Purchaser's request, but at the Supplier's expense, assist the Purchaser to defend any action brought against the Purchaser in consequence of any matter referred to in clause 9.4 above (with the Supplier being the lead party in defending all such matters).
31. The Supplier shall effect and maintain the following insurances:
- 31.1 employer's liability Insurance to a minimum cover of £10,000,000 in respect of each claim and unlimited in the aggregate;
- 31.2 public liability Insurance with an indemnity of at least £10,000,000 in respect of any one claim or number of claims arising out of one cause, the total of claims to be unlimited in any one period of insurance and unlimited in the aggregate; and
- 31.3 product liability insurance with an indemnity of at least £5,000,000 in respect of any one claim or number of claims arising out of one cause, the total of claims to be unlimited in any one period of insurance;
- 31.4 such other insurances which ensure that all of the Supplier's liabilities under these Conditions are properly insured;
32. The policies shall be endorsed to indemnify the Purchaser (or, if the Supplier is notified by the Purchaser in Writing, any Associated Company) as principal, and the Supplier shall forward the policies for these insurances for examination by the Purchaser within one week of the Purchaser's request.

## TERMINATION

33. The Purchaser may terminate the Contract without liability to the Supplier by giving notice to the Supplier at any time if:
- 33.1 the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes bankrupt or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 33.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or
- 33.3 the Supplier ceases, or threatens to cease, to carry on business or ceases to be able to fulfil this Contract;
- 33.4 the Supplier refuses or is unable to meet sums due to the Purchaser when such sums fall due;
- 33.5 the Supplier suffers any similar or analogous action in any jurisdiction; or
- 33.6 the Purchaser reasonably apprehends that any of the foregoing events is about to occur in relation to the Supplier and notifies the Supplier accordingly.
34. Following termination, the Supplier shall cooperate with the Purchaser to affect any alternative requirements of the Purchaser in respect of the supply of the Goods and/or Services by a third-party supplier, including, without limitation, the transfer of any Output Materials, Specification or other documentation to the Purchaser or, at the Purchaser's request, the third-party supplier.

## CONFIDENTIALITY

35. The Supplier shall maintain secret and confidential the Confidential Information and all other information obtained from the Purchaser either



pursuant to these Conditions or prior to and in contemplation of it in accordance with the Confidentiality Agreement.

## **OWNERSHIP OF PURCHASER MATERIALS AND INTELLECTUAL PROPERTY**

36. Where the Purchaser supplies any Purchaser Materials, then:
- 36.1 all intellectual property and proprietary rights in the Purchaser Materials shall remain the Purchaser's exclusive property;
  - 36.2 the Purchaser Materials shall not (save as agreed by the Purchaser in Writing) be used or disclosed by the Supplier for any purpose other than the performance of the Supplier's obligations under this contract;
  - 36.3 the Supplier shall label the Purchaser Materials as the Purchaser's property and keep the Purchaser Materials separate from its own property;
  - 36.4 the Supplier shall return the Purchaser Materials to the Purchaser forthwith if this Contract is terminated or on demand at any time and the Purchaser may at any time enter the Supplier's premises to inspect or remove the Purchaser Materials;
  - 36.5 no term condition or warranty (whether express or implied) as to the nature, quality or fitness of the Materials or their conformity to any sample or description shall form part of, or be a collateral term of any contract between the parties. The Supplier is responsible for determining whether the Materials are suitable for use in connection with the supply of the Goods; and
  - 36.6 the Supplier shall indemnify the Purchaser against waste of Purchaser Materials caused by the Supplier's negligence or poor workmanship.
37. The Purchaser shall be entitled to such Intellectual Property Rights as may exist in the Output Materials. The Seller assigns to the Buyer all such Intellectual Property with the intention that it shall vest in the Buyer upon the delivery of the Goods, the supply of the Services or, if earlier, the creation of each of the Output Materials.
38. The Seller shall do all such things and execute all such documents as may reasonably be required by the Buyer to ensure the vesting in the Buyer of the Intellectual Property rights referred to in clause 37 above.
39. The Supplier shall promptly disclose to the Purchaser (and to no one else) full details of any Discovery (including designs, formulae and working papers) it conceives, makes or improves pursuant to the Contract.
40. The Supplier agrees that any Discovery shall be the exclusive property of the Purchaser, and that it shall:
- 40.1 treat all information connected with the Discovery as Confidential Information and will not without the Purchaser's prior Written consent disclose it or exploit it for its own or any third party's gain;
  - 40.2 co-operate with the Purchaser at its expense in order to vest full right, title and interest in the Discovery in the Purchaser or as it may direct as sole legal and beneficial owner; and
  - 40.3 co-operate with the Purchaser at its expense in order to secure and maintain patent, copyright, design, trademark or any other protection for the Discovery in any country. The Supplier irrevocably appoints the Purchaser to be its attorney with full authority to execute any document, take any action and use its name for the purpose of giving the Purchaser the full benefit of the provisions of this condition. The Supplier warrants that it will not at any time be under any obligation to a third party regarding a Discovery.





## SPARES

41. The Supplier shall maintain a supply of Spares or replacement parts for the Goods for a period of 10 years from the last delivery date of the Goods, such Spares or replacement parts to be fully compatible with Goods previously supplied.
42. If during this period of 10 years the Supplier intends to discontinue the manufacture of Spare or replacement parts for the Goods the Supplier shall forthwith give notice to the Purchaser of such intention and give the Purchaser the opportunity (which shall be exercised within three months) of ordering at reasonable prices such quantities of Spares or replacement parts as the Purchaser shall require in relation to the anticipated life of the Goods.
43. If during the period of 10 years, the Supplier (in the absence of agreement) either:
  - 43.1 fails to fulfil an order for the supply of Spare or replacement parts given by the Purchaser;
  - 43.2 fails to make available to the Purchaser with reasonable despatch and at reasonable prices all such Spares or replacement parts as the Purchaser shall require for the Goods; or
  - 43.3 any of the events in [33](#) to [34](#) occurs;then the Supplier shall forthwith deliver to the Purchaser free of charge such drawings, patterns, specifications and other information as are required by the Purchaser (and it does not already own) to enable it to manufacture Spares for the Goods. The Purchaser shall be entitled to retain such material for such time as is necessary for the exercise by the Purchaser of its rights under this clause and, if the Supplier so requires, shall be returned by the Purchaser to the Supplier in good order and condition (fair wear and tear excepted) at the Purchaser's cost and expense
44. If the Purchaser exercises its rights under clauses [42](#) or [43](#) the Supplier shall also grant to the Purchaser without payment of any royalty or charge full right and licence to make or have made Spares or replacement parts for the Goods and for such purposes only to use, make and have made copies of all drawings, patterns, specifications and other information supplied by the Supplier to the Purchaser pursuant to the Contract and which the Purchaser does not already own.
45. The Purchaser undertakes that all drawings, patterns, specifications and other information obtained from the Supplier under this clause shall be kept confidential and will only be divulged as may be necessary for the purpose of making or having made Spares or replacement parts for the Goods.
46. The Supplier will use its best endeavors to bind its own suppliers to conform with the requirements of clauses [41](#) to [47](#) and will, prior to entry into any such sub-contract, provide the Purchaser with full details of any supplier who will not so conform in which event the Purchaser may direct the Supplier to seek an alternative supplier. Any additional costs incurred by the Supplier in placing any such sub-contract with an alternative supplier shall be added to the Contract price.
47. If the Supplier fails to provide Spares or replacement parts as described in [41](#), and these are available from a supplier, the Purchaser shall have the right to obtain such Spares and replacement parts from the supplier and any additional cost incurred by the Purchaser shall be recoverable from the Supplier.

## EQUIPMENT

48. If the Purchaser pays for or contributes to the cost of equipment required to enable the Supplier to perform its obligations under this Contract, the Supplier shall give written notice of this to the Purchaser. The Purchaser may purchase



full ownership of any such equipment on giving reasonable notice and, where the Purchaser has not already paid in full, payment of the difference (if any) between the amount already paid for towards or attributed to that equipment and the price the Supplier paid for it.

49. The Supplier shall, at its own expense, maintain all the equipment referred to in clauses 48 to 50 in first class condition subject to fair wear and tear and immediately replace any items lost or destroyed. The Supplier shall not sell any of the equipment referred to in this clauses 48 to 50 without the prior written consent of the Purchaser and shall maintain all risks insurance for such equipment with a reputable insurance company at all times for the full replacement value.
50. Where any Order from the Purchaser requires the Supplier to purchase and/or manufacture any tooling and/or other equipment ("Tooling") and the Purchaser has agreed in Writing to pay for some or all of the purchase cost of Tooling, the timing of staged payments for the Tooling shall, unless otherwise agreed in writing by the parties, be as follows:
- 50.1 ten per cent (10%) of the price shall be payable by the Purchaser on the Supplier's acceptance of the relevant Order;
- 50.2 twenty per cent (20%) of the price shall be payable by the Purchaser on the submission by the Supplier of the initial sample inspection report ("ISIR") sample;
- 50.3 thirty per cent (30%) of the price shall be payable by the Purchaser on the approval by the Purchaser of the ISIR sample; and
- 50.4 forty per cent (40%) of the price shall be payable by the Purchaser following the acceptance by the Purchaser of the production batch of the relevant Goods.

## GENERAL

51. The Purchaser (or its duly authorised agent) may, upon giving not less than 2 Working Days written notice, audit the Supplier at its premises in respect of all records, accounts and Goods and Services to be supplied or held on behalf of the Purchaser (including, without limitation, inspection of the production process). If the Purchaser notifies the Supplier of any changes, additions, modifications or improvements which are required to enable the Goods to conform to the Purchaser's quality assurance requirements in force from time to time or to the Contract then they shall be carried out by the Supplier without delay prior to delivery.
52. The Purchaser may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group and/or Associated Company.
53. The Contract is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract unless otherwise agreed in Writing with the Purchaser. The Supplier shall remain liable for all acts and/or omissions of any subcontractor.
54. The Supplier shall not use the Purchaser's name in any publicity or advertising material without the prior Written consent of the Purchaser as to both the use of its name and the nature and form of the publicity or advertising.
55. During the period of the Contract and for a period of 12 months after its termination, the Supplier together with its agents, servants and Associated Companies will neither directly or indirectly offer employment to or actually employ any of the Purchaser's employees. The Supplier agrees that in the event of it being in breach of this condition it shall make a payment to the Purchaser within seven days of any breach of 33%



of the employees' final annual salary. This condition 55 shall only apply in respect of the non-solicitation of those of the Purchaser's employees who have come into to contact with the Supplier pursuant to this Contract.

56. Any notice required or permitted to be given by either party to the other under these Conditions 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. All notices must be given in the English language or, if given in a language other than English, an English translation must be provided. If there is any conflict between the translation of the notice and the original notice, the translation of the notice shall prevail.
57. No waiver by the Purchaser of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.
58. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
59. Save that any Associated Company (as defined in condition 1 above) of the Purchaser may enforce the provisions of the Contract, a person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
60. The Contract shall be governed by the laws of England, and the Supplier agrees to submit to the non-exclusive jurisdiction of the English courts.