

The following terms & conditions apply without exception to all sales by Novar ED&S Ltd of Ex-Or Lighting Products

1. **DEFINITIONS.** In these Conditions of Sale, unless the context otherwise requires the following expressions shall have the following meanings:
  - 1.1. a) "Background Information" Any documents, drawings, plans, maps, charts, images, records or other materials and any data or information provided by the Customer or by a third party on behalf of the Customer to the Supplier relating to the Services;
  - b) "Conditions of Sale" : the standard conditions of sale set out in this document ;
  - c) "Contract" : the contract for the sale and purchase of the Goods and Services;
  - d) "Customer" : the person who accepts the Supplier's Written Quotation for the sale of the Goods and/or Services, or whose Written order for the Goods and/or Services is accepted by the Supplier;
  - e) "Goods" :the goods including any instalment of the goods or any parts for them which the Supplier is to supply in accordance with these Conditions of Sale;
  - f) "Incoterms": the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;
  - g) "Minimum Export Order: The minimum export order value stipulated on the Supplier's current price list from time to time;
  - h) "Minimum Order": the minimum order value stipulated on the Supplier's current price list from time to time;
  - i) "Offer" : an offer made by the Supplier to the Customer to supply the Goods and Services in accordance with the Conditions of Sale;
  - j) "Premises" : the premises of the Customer at which the Services are to be provided;
  - k) " Quotation": the quotation form issued by the Supplier to the Customer in connection with supply of Goods and Services;
  - l) "Services" : the provisions of services to cover and include but is not limited to the installation of the Goods, commissioning, fault call outs, design and project management to be supplied on a time and materials basis, unless specified otherwise in the Quotation or as agreed between the parties. For the avoidance of doubt the time charged will include time spent traveling to the Premises and the actual time spent by the Supplier at the Premises.
  - m) "Supplier": Novar ED&S Limited (registered in England under number 00189291) whose registered office is situated at Honeywell House, Arlington Business Park, Bracknell Berks RG12 1EB;
  - n) "Writing": and any similar expression, including facsimile transmission and comparable means of communication.
  - 1.2. A reference in these Conditions of Sale to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
  - 1.3. The headings in these Conditions of sale are for convenience only and shall not affect their interpretation.
  - 1.4. In these Conditions of Sale references to the masculine include the feminine and the singular include the plural and vice-versa as the context so requires.
2. **BASIS OF THE SALE.**
  - 2.1. The Customer's acceptance of the Offer and the Services or delivery of the Goods includes the acceptance of these Conditions of Sale which can only be varied expressly and by mutual agreement in writing, signed by an authorised officer of the Supplier.
  - 2.2. These Conditions of Sale will apply to the exclusion of all other terms and conditions including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document. However, in relation to certain Goods and/or Services additional terms and conditions may apply, which Supplier will make available to Customer. By accepting such Goods and/or Services Customer agrees to such additional terms and conditions.
  - 2.3. The Supplier's employees or agents are not authorised to make any representations concerning the Goods or the Services unless confirmed by the Supplier in Writing. In accepting the Offer the Customer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Conditions of Sale affects the liability of either party for fraudulent misrepresentation.
  - 2.4. Any advice or recommendation given by the Supplier or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Supplier, is followed or acted on entirely at the Customer's own risk and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
  - 2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance or offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
3. **ORDERS AND SPECIFICATIONS.**
  - 3.1. Unless previously withdrawn or otherwise agreed in writing any Quotation shall be open for acceptance for a period of 30 days or, if different, for the period stated in the Quotation.
  - 3.2. No order placed by the Customer shall be deemed to be accepted by the Supplier until an acceptance of order is issued in Writing by the Supplier or (if earlier) the Supplier delivers the Goods or provides the Services to the Customer.
  - 3.3. The quantity and description of the Goods and Services and any specification for them shall be as set out in the Supplier's Quotation.
  - 3.4. Except when incorporated in the Offer by specific

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reference all specifications, drawings, particulars of weights, shapes, descriptions, illustrations, price lists and other advertising material accompanying the Offer are issued or published for the sole purpose of giving an approximate idea of the Goods and/or the Services described in them and will not form part of the Contract.

- 3.5. The Supplier reserves the right to make any changes in the specification and type of materials in the Goods which do not materially affect the quality or performance, provided that the differences do not make the Goods unsuitable for any purpose which the Customer has made known to the Supplier.
- 3.6. The Supplier reserves the right to impose additional charges if the Customer requires any alteration or modifications in the specifications, drawings or designs, or any development of the Goods or the Services.
- 3.7. No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in Writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profits) costs (including the cost of labour and materials used) damages, charges and expenses incurred by the Supplier as a result of the cancellation.

#### **4. PRICE OF THE GOODS AND SERVICES.**

- 4.1. The price of the Goods and/or the Services shall be the Supplier's quoted price stated on the Quotation or acceptance of order or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Supplier's current published price list on the date of delivery of the Goods or provision of the Services.
- 4.2. The Supplier reserves the right, by giving written notice to the Customer at any time before delivery, to increase the price of the Goods and Services to reflect any increase in the cost to the Supplier which is due to any fact or beyond the control of the Supplier (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost 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 Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- 4.3. The price for the Goods and Services shall be exclusive of any applicable value added tax and all costs or charges in relation to loading, unloading, carriage and insurance which amounts the Customer will be responsible for when it is due to pay for the Goods and/or Services.
- 4.4. Any price quoted is for stipulated quantities only and will not apply to an order for any lesser quantities nor subsequent orders for the same goods.
- 4.5. The Customer agrees that for payment by credit card a credit card fee of 3% of the amounts payable by Customer will be added and payable by Customer.
- 4.6. If for any reason the Customer requests Supplier to provide labour or services outside regular working hours any overtime or other additional expenses occasioned thereby shall be paid by the Customer unless otherwise specified in the Offer.
- 4.7. The Customer shall have the right to request changes within the scope of the work; however, all such changes are subject to acceptance by Supplier. If

any change/variation has an impact on the agreed price, Supplier shall notify Customer of any increase or decrease and on Customer's acceptance the Contract shall be amended accordingly. Supplier shall not be obliged to proceed with any change nor shall such change be effective until accepted by Supplier. Supplier's right to payment for such change shall not be affected, in the event Supplier agrees to proceed prior to the acceptance of such Contract amendment. Unless otherwise agreed to in writing, Supplier shall have the right to invoice immediately for the total value of the change/variation.

#### **5. TERMS OF PAYMENT.**

- 5.1. Subject to any special terms agreed in Writing between the Customer and the Supplier, the Supplier may invoice the Customer for the price of the Goods and Services at any time after delivery of the Goods or provision of the Services.
- 5.2. Time for payment shall be of the essence.
- 5.3. No payment shall be deemed to have been received until the Supplier has received clear funds.
- 5.4. The Customer shall pay the price of the Goods or Services within 30 days of the date of the Supplier's invoice, and the Supplier shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer.
- 5.5. If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to the Supplier, the Supplier may charge the Customer interest (both before and after any judgment) on the amount unpaid, at the higher of the rate of 4 per cent per annum above National Westminster Bank Plc base rate from time to time and the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.6. For the avoidance of doubt, the Customer shall pay to the Supplier on a full indemnity basis, all costs, expenses, losses and liabilities incurred by the Supplier in connection with any third-party costs and legal expenses incurred by the Supplier in obtaining judgment against the Customer.
- 5.7. Customer is prohibited from and shall not set off invoiced amounts or any portion thereof against sums that are due or may become due from Supplier to Customer its parent, affiliates, subsidiaries or other divisions or units on separate transactions.

#### **6. DELIVERY.**

- 6.1. Delivery of the Goods shall be made by the Supplier delivering the Goods to the Customer's place of business or to such other place of delivery as is agreed by the Customer in writing prior to delivery of the Goods or at any time after the Supplier has notified the Customer that the Goods are ready for collection.
- 6.2. The date for delivery shall be specified in the written acceptance of order. Any dates specified by the Supplier for delivery of the Goods are intended to be an estimate only and subject as in clause 6.6 provided the time of delivery shall not be of the essence of the Contract.
- 6.3. UK Orders for Goods over the Minimum Order shall be delivered to the Customer in standard packaging by road at the cost of the Supplier.
- 6.4. UK Orders for Goods under the Minimum Order shall be delivered to the Customer in standard packaging

by road and the cost of such delivery shall be borne by the Customer at the rate stipulated in the current price list.

- 6.5. When Goods are delivered for export or where non-standard packing is requested by the Customer an additional charge shall be made by the Supplier to the Customer at the rate stipulated in the current price list.
- 6.6. Subject to the other provisions of these Conditions of Sale, the Supplier shall not be liable for any loss (including loss of profit) costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Supplier's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract.
- 6.7. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions of Sale or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.8. If the Customer fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Supplier's fault) then, without limiting any other right or remedy available to the Supplier, the Supplier may store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage.
- 6.9. The Customer must inform the Supplier of any discrepancy of any Goods delivered within 14 days

## 7. PROVISION OF THE SERVICES.

- 7.1. Performance of the Services shall be made at such time or times as specified in the Quotation or acceptance of any order.
- 7.2. Any time stated for performance of the Services are estimates only. If, for any reason, the Supplier is unable to perform the Services within the time specified the Supplier shall not be liable for any loss or damage suffered by the Customer.
- 7.3. The Supplier confirms that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with any specification and the reasonable instructions of the Customer from time to time.
- 7.4. The Customer shall furnish the Supplier without charge and within a reasonable time with all Background Information available to it relating to the Services and/or the Premises and shall give such assistance as shall reasonably be required by the Supplier for the carrying out of its duties under the Contract and to enable the Supplier to provide the Services.
- 7.5. The Customer shall ensure the accuracy of all Background Information. The Customer shall make available to the Supplier and its representatives, free of charge and in a timely manner, the necessary equipment and facilities to provide the Services.
- 7.6. The hire, supply or use of specialist equipment by the Supplier to enable access to heights in excess of 3 metres shall not be included in any Quotation or acceptance of order given by the Supplier and the Supplier reserves the right to charge the Customer additional sums to cover the cost of such equipment
- 7.7. In providing the Services to the Customer the Supplier is acting as a contractor only as defined by the

Construction (Design and Maintenance) Regulations 2015 and the Supplier shall not be responsible for any additional costs incurred in connection with any safety planning needs or special design requirements of the Customer which were not notified to the Supplier in Writing prior to conclusion of the Contract.

## 8. ACCESS TO THE PREMISES.

- 8.1. Where the Supplier or its authorised agents or sub-contractors are to provide the Services upon the Premises or other premises at the direction of the Customer, the Customer shall ensure that such Premises and any equipment and machinery involved and all other arrangements affecting the provision of the Services are ready by the time scheduled for the Supplier to enter upon such Premises and obtain access to such parts of such Premises as may be necessary to commence provision of the Services.

## 9. RISK AND PROPERTY.

- 9.1. Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery.
- 9.2. Notwithstanding delivery and passing of risk in the Goods, or any other provision of these Conditions of Sale, property in the Goods shall not pass to the Customer until the Supplier has received payment in full of the price of (i) the Goods and (ii) all other goods sold by the Supplier to the Customer for which payment is due.
- 9.3. Until such time as the property in the Goods passes to the Customer, the Customer shall:
  - 9.3.1. hold the Goods on a fiduciary basis as the Supplier's bailee;
  - 9.3.2. store the Goods, (at no cost to the Supplier) separate from those of the Customer or any third party and properly protect, insure and identify the same as the Supplier's property;
  - 9.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 9.3.4. maintain the Goods in satisfactory condition insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier.
- 9.4. Until such time as the property in the Goods passes to the Customer the Supplier may at any time require the Customer to deliver up the Goods to the Supplier and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 9.5. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all monies owing by the Customer to the Supplier shall (without limiting any other right or remedy of the Supplier) forthwith become due and payable.

## 10. END USER CONTRACTS.

- 10.1. The Supplier acknowledges that the Customer may in the course of its business sell on the Goods to its own customer ("End User").
- 10.2. If the Customer sells on the Goods it shall immediately notify such End Users that title to the Goods remains with the Supplier until payment for such Goods has been made in full to the Supplier.
- 10.3. The Customer hereby grants to the Supplier the irrevocable right to require an assignment of the benefit of the Customer's contract with the End User (including the rights to all monies payable or to

become payable) and any Goods sold thereunder to the Supplier and for that purpose the Customer hereby appoints the Supplier as the duly authorised attorney to do all such acts or things and execute any documents in the name of and on behalf of the Supplier.

- 10.4. For the avoidance of doubt, the rights granted under clause 10.3 shall only be exercisable prior to the occurrence of an Event.
- 10.5. For the purposes of this clause 10 an Event shall be deemed to include:-
  - 10.5.1. any meeting of the Customer's creditors being held or if any scheme of arrangement composition or trust deed is made or proposed by the Customer or on the Customer's behalf with or for the benefit of the Customer's creditors;
  - 10.5.2. if a petition is presented for the making of an administration winding up bankruptcy or sequestration order in respect of the Customer or a resolution is passed for the presentation of any such petition;
  - 10.5.3. if a receiver, administrator or administrative receiver is appointed over or takes possession of all or any part of the assets of the Customer
  - 10.5.4. if the Customer is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or, the Customer appears unable to pay its debts within the meaning of Section 268 of the said Act;
  - 10.5.5. if the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

#### **11. EXHIBITIONS.**

- 11.1. The Customer may not exhibit any Goods or accessories supplied by the Supplier, without first obtaining the Supplier's prior written consent.

#### **12. RETURN OF GOODS.**

- 12.1. The Supplier will accept return of the Goods in the following circumstances:
  - 12.1.1. The Customer may return any unused Goods within 90 days provided the Goods are the same quality and condition as at delivery by the Supplier and have an authorised returns number from the Supplier. The Supplier will charge a handling fee equivalent to 40 per cent of the price of the Goods.
  - 12.1.2. The Customer may return any defective Goods within the Warranty Period (as defined in Clause 13.1) and subject as in clause 13.5 provided the Supplier will refund to the Customer the price of such Goods.
  - 12.1.3. If any Goods returned pursuant to clause 12.1.2 are not defective the Supplier will refund the price of the Goods less a handling fee equivalent to 40 per cent of the price of the Goods.
- 12.2. The Customer must notify the Supplier by telephone when returning the Goods and must ensure a debit note is returned with the Goods detailing the following:
  - 12.2.1. Product code of the Goods;
  - 12.2.2. Product name of the Good;
  - 12.2.3. The quantity of the Goods;
  - 12.2.4. The purchase price of the Goods;
  - 12.2.5. Original invoice for the Goods;
  - 12.2.6. The Supplier's account number;

12.2.7. The reason for the return.

- 12.3. If no goods are received by the Supplier within 90 days of the returns number being issued, the returns authorisation will be revoked.

#### **13. WARRANTIES.**

- 13.1. Subject to the following provisions the Supplier warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from delivery ("the Warranty Period").
- 13.2. The above warranty is given by the Supplier subject to the following conditions
  - 13.2.1. the Supplier shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;
  - 13.2.2. the Supplier shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in Writing) misuse or alteration or repair of the Goods without the Supplier's approval;
  - 13.2.3. the Supplier shall be under no liability in respect of any damage to the Goods caused during transit;
  - 13.2.4. the Supplier shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
  - 13.2.5. the above warranty does not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Customer shall only be entitled to the benefit of such warranty or guarantee as is given by the manufacturer to the Supplier
  - 13.2.6. Subject as expressly provided in these Conditions of Sale, all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 13.3. A claim by the Customer which is based on any defect in the quality or condition of the Goods shall (whether or not delivery is refused by the Customer) be notified to the Supplier within 5 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Supplier accordingly, the Customer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect or failure, and the Customer shall be bound to pay the price for the Goods as if the Goods had been delivered in accordance with the Contract.
- 13.4. Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet any specification is notified to the Supplier in accordance with these Conditions of Sale, the Supplier may replace the Goods (or the part in question) free of charge or, at the Supplier's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), in which case the Supplier shall have no further liability to the Customer.

**14. LIMITATION OF LIABILITY.**

- 14.1. The Supplier will have no liability for defective Goods and/or Services supplied or performed by its sub-contractors where such sub-contractors have been nominated (whether alone or with others) by the Customer.
- 14.2. In no event shall either party be liable for;
- a) any indirect, incidental, consequential loss;
  - b) any loss arising from business interruption;
  - c) loss of profits;
  - d) loss of revenue;
  - e) loss of use of any property or capital;
  - f) loss of anticipated savings;
  - g) loss of data or loss as a result of a Cybersecurity event. Neither party shall be liable for any loss or damage where that liability arises as a result of their knowledge (whether actual or otherwise) of the possibility of any such loss or damage. Supplier's liability in respect of any order, Contract or otherwise under these Conditions of Sale shall in no case exceed the price of the relevant Goods and/or Services. These exclusions and limitations on damages shall apply regardless of how the costs, loss or damage may be caused and against any theory of liability, whether based in contract, tort, or otherwise. Neither party seeks to exclude or restrict its liability for: (a) death or personal injury resulting from negligence; (b) fraud; (c) the terms implied by section 12, Sale of Goods Act 1979; or (d) any matter in respect of which, by law, it is not permitted to restrict its liability.
- 14.3. The Supplier shall only accept liability for damage to the Customer's property caused by the negligence of itself, its employees and agents if the same is notified to the Supplier within 3 days of such damage occurring. Where the Supplier accepts responsibility under this clause
- 14.4. it may, at its sole option, repair or replace, as the case may be, such property which is proved to the Supplier's satisfaction to have been damaged by its negligence or that of its employees, agents or sub-contractors.
- 14.5. The Supplier accepts no responsibility or liability where the Services cannot be provided as a result of any act or omission of the Customer including but not limited to not making available adequate access to the Premises in accordance with clause 8 hereof and the Customer shall still be liable to pay the Supplier for the Services as if the same had been duly performed.
- 14.6. Where the Customer deals as a consumer, these conditions shall not affect the Customer's statutory rights.
- 14.7. The Supplier shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, the Services or any of the Supplier's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Supplier's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Supplier's reasonable control (force majeure):
- 14.7.1. Act of God, explosion, flood, tempest, fire or accident;
  - 14.7.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;

- 14.7.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 14.7.4. import or export regulations or embargoes;
  - 14.7.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a third party);
  - 14.7.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 14.7.7. power failure or breakdown in machinery.
- 14.8. If the force majeure continues for longer than 90 days, either party may terminate a Contract and Customer will pay Supplier for work performed prior to termination and reimburse all reasonable expenses incurred by Supplier as a result of such termination. If delays in delivery or performance are caused by force majeure or Supplier, the date of delivery or performance shall be extended by the period of the delay or as mutually agreed. If Supplier should default or delay or not deliver product for any other reason, Customer's sole remedy against Supplier shall be an option to cancel its order, through written notice to Supplier.

**15. INSOLVENCY OF CUSTOMER.**

- 15.1. This clause 15 applies if:
- 15.1.1. any meeting of the Customer's creditors being held or if any scheme of arrangement composition or trust deed is made or proposed by the Customer or on the Customer's behalf with or for the benefit of the Customer's creditors;
  - 15.1.2. if a petition is presented for the making of an administration winding up bankruptcy or sequestration order in respect of the Customer or a resolution is passed for the presentation of any such petition;
  - 15.1.3. if a receiver, administrator or administrative receiver is appointed over or takes possession of all or any part of the assets of the Customer;
  - 15.1.4. if the Customer is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or the Customer appears unable to pay its debts within the meaning of Section 268 of the said Act; 15.1.5 the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 15.2. If this clause applies then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered, but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**16. CYBERSECURITY.** The Customer acknowledges and agrees the following;

- 16.1. Customer is responsible for providing and maintaining and operating environment with at least the minimum standard specified by Supplier. This includes complying with applicable Cybersecurity standards and IT security best practices including those recommended by any National Institutions in the Customer's territory.
- 16.2. To promptly notify Supplier if a Cybersecurity event occurs and facilitate Supplier's investigation of any cybersecurity event involving the Goods, Software

or Services, Customer will cooperate with Supplier in any investigation, litigation or other action, as deemed necessary by Supplier to protect its rights relating to a Cybersecurity event.

- 16.3. If a Cybersecurity event occurs Customer shall take reasonable steps to immediately remedy any event and prevent further events at Customer expense in accordance with applicable laws regulations and standards. Customer further agrees that it will use its best efforts to preserve forensic data and evidence in its response to a cybersecurity event. Customer if requested will make available this forensic evidence and data to Supplier.
- 16.4. Supplier shall not be liable for loss or damages caused by a Cybersecurity event resulting from Customers failure to comply with these terms or Customers failure to maintain reasonable and appropriate Cybersecurity measures.
- 16.5. Customer shall indemnify Supplier against any claims, damages, losses, costs and expenses incurred by Supplier as a result of claims made against Supplier by third parties arising out of use of the goods or services with any incompatible ancillary products that may be connected to the goods, failure to apply required or recommended updates or patches to any software or device in the goods network environment or any Cybersecurity event arising out of the supply of goods and services under these Conditions.

#### **17. EXPORT TERMS.**

- 17.1. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provision of Incoterms shall have the same meaning in these Conditions of Sale, but if there is any conflict between the provisions of Incoterms and these Conditions of Sale, the latter shall prevail.
- 17.2. Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 17 shall (subject to any special terms agreed in Writing between the Customer and the Supplier) apply notwithstanding any other provisions of these Conditions of Sale.
- 17.3. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them. Customer shall comply with all applicable export control laws and regulations of the United States and any other country having proper jurisdiction and shall obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Goods technology and software purchased, licensed, and received from Supplier.
- 17.4. Unless otherwise agreed in Writing between the Customer and the Supplier. The Goods shall be delivered for the airport or seaport of shipment and the Supplier shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
- 17.5. The Customer shall be responsible for arranging for testing and inspection of the Goods at the Supplier's premises before shipment. The Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

#### **18. SALE OF GOODS AND SERVICES ACT.**

- 18.1. All Goods and Services supplied or performed by the Supplier are supplied with the benefit of the terms implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982. Subject thereto, and whether or not the Contract is a contract of sale, all other conditions warranties and other terms express or implied statutory or otherwise are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Supplier in Writing provided that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or propose to exclude from the Contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this paragraph will not apply to any such term.

#### **19. ASSIGNMENT.**

- 19.1. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier. 19.2 The Supplier may assign the Contract or any part of it to any person, firm or company.

#### **20. WAIVER.**

- 20.1. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

#### **21. GOVERNING LAW.**

- 21.1. The Contract shall be governed by the laws of England and Wales and the Customer agrees to submit to the non-exclusive jurisdiction of the English Courts.
- 21.2. To the extent that the provisions of the Housing, Grants, Construction and Regeneration Act 1996 ("the Act") and any amendments thereof do not conflict with the Conditions of Sale, they shall be deemed to be incorporated into the Contract. For the avoidance of doubt, if any provisions of the Act do conflict, these Conditions of Sale shall prevail.

#### **22. NOTICES.**

- 22.1. Any notice required or permitted to be given by either party to the other under these Conditions of Sale 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. Provided that where necessary the dispatch of such notice or document has been properly pre-paid a notice or document so given or served shall conclusively be deemed to have been received at the time set out alongside the respective manner of service namely:-
- 22.1.1. by hand on the recipient or an authorised officer thereof - at the time of such service;
- 22.1.2. by first class post - at the commencement of the first business day next commencing more than 24 hours after dispatch;
- 22.1.3. by e-mail transmission at the time of such service;
- 22.1.4. abroad by first class airmail post - at the commencement of the first business day next commencing more than 48 hours after dispatch.

**23. SEVERABILITY.**

- 23.1. In the event that any or any part of the terms, conditions or provisions contained herein shall be determined by any competent authority to be invalid, unlawful, or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

**24. RIGHTS OF THIRD PARTIES.**

- 24.1. A party who is not a party to the Contract has no right under the Contracts (Right of Third Parties) Act 1999 to enforce any term of the Contract.

**25. RELATIONSHIP OF PARTIES.**

- 25.1. Nothing contained in the Contract, and no action taken by the parties pursuant to the Contract will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Subject as in clause 10, provided neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

**26. Data Protection**

- 26.1. The Supplier will process Customer's personal data as necessary to sell the products and/or to provide the services to Customer and to meet Supplier's obligations under any purchase order and applicable law as a data processor. Supplier shall process Customer's personal data during the period of performance of any Customer's purchase order governed by these terms and conditions and thereafter. Customer as data controller acknowledges and agrees that Supplier will share personal data with its affiliated companies and may transfer the personal data to USA, India or Mexico.

**27. Confidential Information & Data Usage**

- 27.1. Confidential information includes any information or data that are provided by one party (the disclosing party) to the other party (the receiving party) in any form, including any information or data relating to the operation or performance of products and all data generated by the products which are aggregated and de-identified. Subject to compliance with all applicable data protection laws and regulations, Supplier retains the right to utilize any and all data and information that is collected, generated, processed or transmitted by or through the products and all data and information provided or transmitted to Supplier regarding the operation or performance of the products in an aggregated or anonymized form for any business purpose, including product, software or service development, marketing or sales support or other analytics. To the extent that Supplier does not own any such information or data, Buyer grants Supplier and its affiliated companies (or shall procure for Supplier and its affiliated companies the grant of) a perpetual right to use and make derivative works from such information and data for any lawful purpose.

Ver. 20/02/2019