

PAR Systems (U.K.)

Purchase Order Terms and Conditions

Document Number 70585808

1. GENERAL CONDITIONS

Each purchase order ("Order") which PAR Systems Ltd, a company incorporated in England and Wales with company number 07293592 ("PAR Ltd"); Marine Systems Technology Ltd, a company incorporated in England and Wales with company number 04253739 ("Marine Systems Ltd"); and/or MST Engineering Ltd, a company incorporated in England and Wales with company number 06349396 ("MST Ltd" either individually or together with PAR Ltd and/or Marine Systems Ltd, "Buyer" or "PAR Systems U.K."), all of which are wholly-owned subsidiaries of PAR Systems, LLC, a Delaware limited liability company (USA), may place with you ("Seller") from time to time shall be subject to the provisions of the Order and to the following terms and conditions (the "Terms and Conditions").

A. ACCEPTANCE OF ORDER

Each Order is Buyer's offer to Seller. Acceptance is strictly limited to its terms. Buyer shall not be bound by and specifically disclaims, and Seller waives, any term or condition whatsoever that is different from or in addition to the provisions of the Order or these Terms and Conditions, whether or not such term or condition will materially alter the Order. Seller's commencement of performance or acceptance or delivery of the Order's requirements, in any manner, shall conclusively evidence agreement by Seller to the Order and these Terms and Conditions as written. In the event of a conflict between these Terms and Conditions and the terms of an Order (including any attachments to such Order) the applicable terms of the Order shall take precedence in respect of the conflicting provisions.

B. AMENDMENTS

The terms and conditions in any Order, and these Terms and Conditions, may not be added to, modified or amended, superseded, or otherwise altered except by a written amendment signed by authorized representatives of Buyer and Seller.

C. INSPECTION AND ACCEPTANCE

All goods or services provided under an Order by Seller or Seller's permitted subcontractors shall be subject to inspection and testing, at all reasonable times and locations, including during the period of manufacture, by Buyer and Buyer's customers. If any inspection or test is made on Seller's or its subcontractor's premises, Seller or Seller's subcontractor, without any charge to Buyer or Buyer's customers, shall provide all reasonable facilities and assistance necessary for the safety and convenience of inspectors of Buyer and Buyer's customers. All technical and quality requirements of the Order shall apply to all Seller's subcontractors. All goods are also subject to further inspection and acceptance at Buyer's plant or other specified place of delivery notwithstanding any payments or other prior inspections. Buyer shall not be deemed to have accepted any goods or services until it has had a reasonable time to inspect them in accordance with this clause C, or, in the case of a latent defect in the goods, until a reasonable time after the latent defect has become apparent. Notwithstanding any other provision of any Order, and without limiting any other right or remedy that Buyer may have, if any goods or services delivered to Buyer do not comply with Clause 6, or are otherwise not in conformity with the terms of these Terms and Conditions or an Order, then Buyer may reject such goods or services. Payment for all or any part of the goods or services purchased pursuant to any Order shall not constitute acceptance of such goods or services, or a waiver of any warranty relating to the goods or services. Inspection or failure to inspect at the delivery destination will not affect any warranty.

D. EXPIRATION OF ORDER

Any Order will expire if not accepted by Seller within thirty (30) days of the date appearing on the Order, or if Buyer withdraws the Order by notice to Seller before Seller's acceptance thereof.

2. PRICES

Seller agrees that if it sells (or offers to sell) similar goods or services of like quality and quantity to another customer on broadly similar terms and conditions but for less than the price paid by Buyer for the goods or

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services, Seller shall: (i) reduce the relevant price to Buyer to match the lower price for so long as the lower price is available (but for no longer) to the other customer; and (ii) refund Buyer the difference between the price paid by Buyer and the lower price in respect of its purchases of the goods or services after Seller began charging the lower price. Buyer shall receive the full benefit of any reduction in the cost of any goods or services, if that reduction is made subsequent to Seller's receipt of the Order.

3. DELIVERY

Time is of the essence with respect to Seller's performance under each Order. Deliveries pursuant to any Order shall be strictly in accordance with the specified quantities, schedules, and other requirements of the Order. If requested by Buyer, Seller shall, at Seller's expense, ship via air or other expedited transportation method to avoid or minimize any actual or potential delay to the maximum extent possible. Buyer's Traffic Department will direct Seller as to the method of shipment. However, if Buyer shall request Seller to determine the method of shipment, Seller shall (a) describe shipments in accordance with the carrier's tariffs to obtain the lowest freight rate; (b) insure or declare value on shipment only to the point designated in the Order; (c) when a shipment is subject to freight rates dependent upon value, annotate the bill of lading, airbill or express receipt to show that the shipment has been released at the maximum value which applies to the lowest rate provided in applicable tariffs; and (d) consolidate all shipments to be forwarded on one day. Seller shall mail the original invoice to Buyer's Accounting Department when the articles are shipped. All invoices must state the shipping point. Each case or parcel and accompanying packing list of contents must show Buyer's Order number. If no packing list accompanies the shipment, Buyer's count will be binding on Seller. Goods furnished in excess of the quantities ordered may be retained by Buyer for no charge, unless Seller notifies Buyer within forty-five (45) days after shipment that it desires the return thereof. Seller shall reimburse Buyer for the full cost of returning such overshipment.

4. PACKING

Unless otherwise provided on the Order, Seller shall bear the expense of packing, boxing and/or crating the goods ordered. Seller shall provide such packing, boxing and/or crating in accordance with the highest industry standards, and shall be liable for any negligence or defect in the performance of this duty to Buyer and to any persons claiming through Buyer for loss or damage to the goods as a result of such negligence or defect.

5. RISK OF LOSS/TITLE TRANSFER

Unless otherwise provided under any Order, the expenses of shipping and the risk of loss of and title to the goods ordered shall be borne by Seller up to the F.O.B. point specified on the face thereof. At that F.O.B. point, risk of loss and title will pass to Buyer.

6. WARRANTIES

In addition to all other warranties, express or implied, Seller expressly warrants for eighteen (18) months after commencement of the warranty period, which shall begin upon Seller's receipt of Buyer's final payment under any Order, that all goods, materials, and services furnished under any Order in all respects:

- a) are fit and safe for the particular purpose for which they are manufactured and to the extent that Seller knows or has reason to know of the purpose for which the goods or services are intended, are fit and sufficient for that purpose;
- b) are free from defects in material, workmanship and design;
- c) are merchantable;
- d) conform to applicable specifications, drawings, samples and descriptions;
- e) do not contain and were not manufactured using (i) ozone depleting substances known as halons, chlorofluorocarbons, methyl chloroform and carbon tetrachloride, or (ii) asbestos;
- f) are new and do not contain used or reconditioned parts;
- g) meet all applicable requirements to be marked with the "Conformité Européene" or "CE" mark and have been so marked; and

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- h) are in compliance with and have been manufactured and sold in accordance with all applicable international, supra-national and domestic laws, rules and regulations.

No warranty will be deemed to have been waived by reason of Buyer's inspection of, receipt of, or payment for, the goods or services. Goods or services not in accordance with these warranties may be rejected and returned to Seller at Seller's expense for full credit or replacement, at the price specified. Repairs and/or replacements shall be made by Seller without cost to Buyer and upon failure to do so within a reasonable time and with three (3) days' prior written notice to Seller, Buyer may, at its sole discretion, perform repairs or make replacements at Seller's cost and expense. The foregoing are in addition to and are without prejudice to of all other rights, which Buyer may have by reason of any breach of Seller's warranties.

7. CHANGES

Buyer reserves the right from time to time to make changes by written notice, in drawings, designs, specifications, description to which the goods or services are to conform, in methods of shipment, packaging, place of delivery and/or instructions as to any material and or work covered by any Order. Seller will notify to Buyer in writing, within five (5) days of receipt of any written change notice, of any adjustment in price or time for performance based on those changes. If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Order shall be modified accordingly, based on good faith negotiations between the parties. Nothing herein shall excuse Seller from proceeding without delay to perform the Order as changed. If the parties cannot agree on such changes, Buyer, in its sole discretion, may cancel the Order and pay pro rata for the portion of the Order performed by Seller or may require the Seller to perform the Order as changed and submit the issue of adjustments in price or delivery schedule to arbitration as provided below.

8. SUBSTITUTIONS: VARIATIONS IN QUANTITY

Unless otherwise specified in any Order, Seller shall not substitute components, materials, finished goods or accessories for those ordered without the written consent of Buyer. Goods shipped against any Order must not be in excess of the quantity ordered in total or for a particular delivery date. Overshipments, other than as specified herein, which are not accepted by Buyer may be returned to Seller at Seller's cost and expense.

9. CANCELLATION AT BUYER'S OPTION

Buyer may cancel any Order (or any portion thereof) at any time and for any reason by written notice to Seller. In such case, Seller shall immediately stop work on the applicable Order (or part thereof) and shall use its best endeavors to mitigate any costs and expenses of such cancellation and shall promptly advise Buyer of such costs. Subject to Clause 10 and the limits on liability set out in this Clause 9 and Clause 27, Buyer shall be responsible for paying for any costs properly incurred by Seller in respect of such cancelled Order up to the date of cancellation and any future costs already incurred that the Seller, despite using its best endeavours, cannot cancel, in respect of such cancelled Order. If the parties are unable to agree in writing on the cancellation costs payable by Buyer, the unresolved cancellation cost issue shall be submitted to arbitration as provided below. Notwithstanding any provision of any Order to the contrary, Buyer's maximum liability for goods or services shall be limited to a sum no greater than the aggregate gross purchase price value of the goods or services scheduled for delivery under the Order issued. This does not limit or affect the right of Buyer to cancel an Order for cause. In no event shall Buyer be liable for punitive, indirect, special, incidental or consequential loss, or loss of profits or any cancellation or termination fee, for cancellation of all or any portion of an Order. Buyer may at its option reschedule delivery of all or any part of any Order at no cost or cancellation charge by giving Seller written notice thirty (30) days prior to the scheduled delivery date.

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10. CANCELLATION FOR DEFAULT/CAUSE OF SELLER

Buyer may, without liability, payment or penalty of any kind, cancel all or any part of any Order, and at Buyer's option cancel all other open Orders, whether or not then delivered, if any of the following events occur:

- a) Seller fails to make deliveries of goods or perform services strictly in accordance with the terms of these Terms and Conditions and as set forth in the applicable Order relating to such goods or services;
- b) Seller breaches any of these Terms and Conditions, including the warranties of Seller;
- c) Seller files or has filed against it any petition or other proceeding in receivership, bankruptcy or insolvency, or makes an assignment for benefit of creditors, or is unable to pay its debts in the ordinary course as they become due;
- d) Seller injures or removes the goods or sells or pledges or in any way transfers the goods or its interest in them, or suffers or permits any lien to be placed on them, or suffers or permits such goods to be seized by any writ or process of law; or
- e) Seller fails to perform any other terms of any Order, or so fails to make progress required to ensure the performance of any Order in accordance with its terms, and in either case or above cases, does not cure (if curable) such failure within ten (10) days or such longer period as Buyer may authorize in writing, after receipt of notice from Buyer specifying such failure.

In case of any such cancellation, Buyer may advise Seller of the damages occasioned by the breach. If the parties are able to mutually agree on the damages resulting from Seller's default, Seller shall promptly pay them in full to Buyer, or, if the parties cannot agree, the issue shall be submitted to arbitration for resolution in accordance with the dispute resolution procedure set out below. The rights and remedies given to Buyer hereunder are cumulative and are in addition to any other remedies Buyer may have by operation of law.

11. INTELLECTUAL PROPERTY INDEMNITY

Seller warrants that the services or goods delivered under each Order do not infringe any patent, copyright, trademark, service mark or trade name, or other intellectual property right of any third party. Seller shall, at its sole cost and expense, defend and indemnify Buyer and its customers and their respective officers, directors, employees, agents, successors, assigns, and users of the goods or services against any and all liability, damages, loss and expense of any kind (including legal fees and expenses) arising out of any of any claim, action or litigation of any kind arising out of any alleged or actual direct, indirect or contributory infringement of any third party patent, copyright, trademark, service mark or trade name, foreign or domestic, or other intellectual property rights resulting from the possession or use or resale or manufacture of said services or goods or any parts thereof by the Buyer or its customers, in any form or media. In addition to the foregoing, if Buyer is enjoined from using the services or goods delivered under an Order, Buyer, in its sole discretion, may require Seller to procure for Buyer rights to continue using the infringing services or goods, to replace the infringing services or goods with non-infringing services or goods to the satisfaction of Buyer, to modify the infringing services or goods so that they become non-infringing, or for Supplier to accept return of the services or goods for a full refund to Buyer of the amount paid for such services or goods. This indemnity shall survive the termination or expiration of any Order.

12. MATERIALS AND INFORMATION FURNISHED BY BUYER

All materials, drawings, specifications, photographs, tools, dyes, and other engineering and manufacturing materials and information furnished by Buyer shall remain Buyer's property, shall not be copied, decompiled or reverse engineered by Seller without Buyer's prior written consent and shall, together with any and all copies thereof, be returned to Buyer upon request at any time. All such items shall be subject to removal and inspection by Buyer at any time. All such items shall be identified and marked as Buyer's property, shall be used only for the purpose of filling Orders, and shall be adequately insured for Buyer's protection against risk of loss or damage for their replacement value at Seller's expense while they are in Seller's possession.

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13. CONFIDENTIAL INFORMATION

All of the items described in Paragraph 12, and any information related to Buyer's business with Seller, and all other non-public or proprietary information concerning the business affairs and operations of Buyer and its customers, including without limitation lists of customers, trade secrets, know-how and information concerning the design or methods of manufacturing goods or any other information which Buyer may from time to time specify as being confidential, shall be treated by Seller as confidential. Seller agrees that, for itself and its affiliates, during a period of ten (10) years, it shall not (i) disclose such confidential information to any third party without the prior written consent of Buyer, except for disclosures expressly permitted below, and (ii) not use such confidential information for any purpose except those licensed or otherwise authorized or permitted by these Terms and Conditions Agreement. All such confidential information provided by Buyer to Seller shall be used by Seller only to the extent necessary to enable Seller to provide the goods or services set out in any Order and will not be disclosed to any party or used by Seller for any purpose other than fulfilling the Order. Seller shall restrict access to such confidential information to those of its employees who need to have knowledge thereof in connection with the performance of any Order. Seller shall inform its employees having access to such information of the confidential nature thereof, and shall ensure such recipients are bound by confidentiality obligations not less onerous than those set out in these Terms and Conditions. Seller shall be responsible for any unauthorized disclosure by any of its employees. Confidential information may be disclosed by Seller to the extent (and only to the extent) such disclosure is reasonably necessary in order to comply with applicable law. Notwithstanding the foregoing, Seller shall use the same degree of care to preserve the confidential nature of such information as it uses to preserve the confidential nature of Seller's most sensitive information, but in all events not less than a reasonable degree of care. To the extent that goods covered by an Order are produced in accordance with drawings or specifications that are proprietary to Buyer or to Buyer's customer, Seller shall not manufacture a greater quantity thereof than are required to be delivered under the Order.

14. PAYMENT DEFAULT BY BUYER; GROUNDS FOR NOT PAYING INVOICES

If payment terms are not set forth on an Order, Buyer shall make payment with respect to such Order in pounds sterling, net sixty (60) days from delivery of the goods or performance of the services ordered pursuant to the Order, or receipt of the invoice, whichever is later. Buyer's failure to make such payment when due or to perform any other obligation under any Order shall not be deemed a breach unless such failure shall have continued for a period of thirty (30) days from receipt of written notice of default from Seller. Buyer further, in Buyer's sole discretion, may decline to pay invoices, in whole or in part, to the extent Buyer reasonably determines it is necessary to protect itself from any loss due to one or more of the following reasons: (a) a breach by Seller on any Seller obligation under any Order, including all reasonable costs that Buyer may incur to remedy the breach (whether by repairing or re-ordering the goods or re-performing the services, or otherwise) and all other costs directly attributable to other services that are required to be performed in connection with remedying such breach; (b) any third-party claims filed in connection with any Order, or any reasonable evidence indicating probable filing of such claims, or Seller's failure to fulfill its obligations to Seller's subcontractors or its suppliers, all in connection with any Order; (c) any damage to Buyer or to Buyer's customer that is not directly connected with an Order, where such damage arises out of the actual or alleged wilful misconduct or negligent acts or omissions of Seller or a Seller's subcontractor, agent, employee, or any other person for whom, directly or indirectly, Seller or Seller's subcontractor may be liable; (d) any reasonable evidence that the goods will not be delivered and/or the services performed by the agreed upon date, as specified in an Order; or (e) the invoice contains any unsubstantiated or unsupported amounts invoiced by Seller.

15. WAIVER

No waiver by a party shall be effective unless in writing and signed by a duly authorized representative of that party. No waiver shall be inferred from a party's conduct.

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16. TAXES

Unless otherwise specifically provided in any Order or by law, the prices set forth in any Order include all applicable taxes and duties, and any present or future sales, use, privilege, occupation, excise, or other tax, custom, fee or charge imposed by any governmental authority on the purchase of the goods, and shall be paid or reimbursed by Seller or paid by Buyer and applied against the purchase price, as the case may be.

17. ARBITRATION

All disputes arising out of or in connection with any Order shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules"). The Rules are deemed to be incorporated by reference into this section. The tribunal shall consist of three arbitrators. The seat (legal place) of the arbitration proceedings shall be London, U.K. The proceedings shall be in the English language. The parties acknowledge and agree that the prevailing party in any such proceedings shall be entitled to reasonable legal fees and costs in enforcing its rights under any Order. The parties shall continue to perform their respective obligations under any Order pending the outcome of any arbitration specified above.

18. GOVERNING LAW

Each Order, and these Terms and Conditions, and any dispute or claim (including non-contractual disputes or claims) arising hereunder shall be governed and constituted according to the laws of England, without application of any conflict of laws principles. For the avoidance of doubt, these Terms and Conditions, and each Order, specifically exclude the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods and the U. N. Convention on the Limitation Period in the International Sale of Goods, as amended by Protocol.

19. ASSIGNMENT

Buyer, in issuing any Order is relying on Seller's personal performance thereunder and Seller may not assign any Order or have any portion of any Order performed under subcontract without the written consent of Buyer, which consent may be withheld in the sole discretion of Buyer. Seller shall include the provisions contained in these Terms and Conditions in any of Seller's contracts or orders with all permitted subcontractors. Any unauthorized assignment or subcontract by Seller shall be deemed null and void. Buyer may freely assign any Order, in whole or in part, in its sole discretion.

20. NOTICES

All notices or other communications required or permitted to be given under any Order or these Terms and Conditions shall be in writing and addressed to the other party at the address provided on the Order, or as otherwise designated in writing, and shall be deemed effectively given on the earliest of: (a) when delivered, if personally delivered; (b) on the third (3rd) business day following the date of mailing if delivered by certified or registered mail, return receipt requested; (c) on the date of transmission, if delivered by facsimile or e-mail transmission; or (d) when received by the party to whom notice is intended or required to be given. "Business day" means a day other than Saturday, Sunday or a statutory holiday in the U.K. or the U.S.

21. COMPLIANCE WITH LAWS, REGULATIONS AND POLICIES

All applicable international and domestic laws, ordinances, statutes, rules, treaties, codes, permits, guidelines, regulations, orders or decrees of any governmental authority (including binding interpretations of the foregoing, such as formal orders, administrative decisions, directives and the like); or any judgment, decision, decree, injunction, writ, order or the like action of any governmental authority as in effect at the time Seller's obligations under an Order are performed shall apply to Seller and its subcontractors, employees and representatives. Seller further will perform its obligations under each Order in accordance with Buyer's Supplier Code of Conduct as set forth at <http://www.par.com/pdf/PaRSystemsSupplierCodeofConduct.pdf>, which is hereby incorporated and shall form part of the Terms and Conditions. Without limiting the generality of the foregoing, Seller agrees not

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to make any false or misleading statements to or concerning Buyer, including, but not limited to, the Buyer's performance and commitments, or engage in any illegal, deceptive, unethical or improper acts in connection with performing Seller's obligations under any Order.

22. EXPORT CONTROL COMPLIANCE

Notwithstanding the generality of Seller's obligations pursuant to clause 21 or any other provision of these Terms and Conditions, Seller shall comply with all, and shall not cause Buyer to violate any, applicable laws, regulations or ordinances of any governmental authority in any country, including but not limited to the U.K. Export Control Act 2002, UK economic sanctions measures, and all subordinate legislation, and laws and regulations of the United States that regulate the import or export of goods (including software), technology, technical data, or services provided by Seller under any Order, and all reasonable requests from Buyer as to the form and manner of such compliance. Such compliance activities shall include, without limitation, proper marking of the country of origin of goods, proper labelling, provision of all documentation requested by Buyer or as otherwise needed for compliance (including, without limitation, certification of country of origin, complete product descriptions on invoices, export control jurisdiction and classification information as to goods and other items, Harmonized Tariff Schedule http://www.usitc.gov/tariff_affairs/ numbers on invoices for all goods, and supporting documentation related to any tooling or other assets provided by Seller) and other compliance measures. Seller shall be responsible for obtaining required export licences or other approvals from the government of the country of origin and/or of export/reexport, as applicable. Should any government deny or otherwise fail to issue a licence or approval necessary for the performance of any Order for reasons beyond the control of Seller, such Order may be cancelled in accordance with the section entitled "Cancellation at Buyer's Option" above. Furthermore, to the extent Seller receives technology, technical data, information, or any property under any Order, Seller acknowledges its obligations not to use, transfer, retransfer, release, import, export, or reexport such items in violation of such applicable laws, regulations, or ordinances, and to strictly adhere to all terms and conditions of any licenses or other authorizations pursuant to which such items were supplied.

Seller represents that it is not (a) designated for export controls or sanctions restrictions under applicable export control and economic sanctions laws, regulations, orders, and requirements (including without limitation designated under UK sanctions measures or on the U.S. List of Specially Designated Nationals and Blocked Persons), (b) owned 50% or more or controlled by one or more such designated persons, or (c) organized under the laws of, ordinarily resident in, or owned or controlled by the government of a country or territory subject to comprehensive UK or U.S. sanctions.

Seller shall notify Buyer of any evidence of potential violations of export controls, or economic sanctions laws, regulations, or ordinances in relation to any business activities concerning Buyer or transactions directly or indirectly involving Buyer.

For the avoidance of doubt, nothing in these Terms and Conditions requires Buyer to take any action, or refrain from taking any action, that would be contrary to applicable laws, regulations, or ordinances.

23. LICENCES AND PERMITS

Seller shall obtain all permits, licences, certifications; fulfill any other applicable governing authority requirement; and furnish any documentation, bonds, security or deposits required to permit performance of its obligations under each Order. Seller certifies that it and all associates and permitted subcontractors are licensed, certified and registered to perform Buyer's obligations under each Order. Such licences, certifications and registrations shall be maintained throughout performance of each Order and for a reasonable time thereafter and failure to do shall entitle Buyer to terminate for cause.

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24. SET-OFF

Any amounts chargeable or payable by Seller to Buyer under the provisions of any Order or in connection with the goods and services referred to therein, may at Buyer's election, be set-off in whole or in part against any sums payable to Seller whether arising under that Order or otherwise, including under any other Order. Any such set-off shall be without prejudice to any claims of Buyer based on any loss, damage or expense not reflected in such set-off.

25. INDEMNIFICATION OF THIRD PARTY CLAIMS

Seller hereby agrees to indemnify Buyer, its affiliates and their respective successors and assigns, and its and their respective directors, officers, agents and employees, from and against any and all claims, liabilities, damages, losses, causes of action and judgments brought by any person, corporation, governmental entity or other entity not a party to an Order and relating to Seller's performance or non-performance under any such Order, any breach of these Terms and Conditions by Seller, and any breach of any warranty set forth in these Terms and Conditions (collectively "Third Party Claims"). In addition, this indemnity includes Buyer's reasonable legal fees and costs and expenses incident to the defence of any Third Party Claim. The foregoing indemnification shall apply, without limitation, to the extent any Third Party Claims arise from (a) any defect in the design, workmanship or material of any product or associated software delivered by Seller to Buyer under any Order and/or (b) any negligence (whether active or passive) or wilful misconduct of Seller, its contractors of any tier or its or their directors, officers, agents, or employees. This indemnity shall survive the termination or expiration of any Order.

26. FORCE MAJEURE

Neither party shall be liable for damages for delay in delivery under any Order arising out of causes beyond its reasonable control and without its fault or negligence. This includes, but is not limited to, acts of God or of the public enemy, acts of any Government authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. If the delay is caused by the delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both Seller and the subcontractor, and without the fault or negligence of either of them, then Seller shall not be liable to Buyer in damages unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule. Seller will notify Buyer in writing within ten (10) days after the beginning of any such delay.

27. CLAIMS

Without prejudice to clause 36, Buyer shall not be liable to Seller, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

- (a) loss of profit; or
- (b) loss of goodwill; or
- (c) loss of business; or
- (d) loss of business opportunity; or
- (e) loss of anticipated saving; or
- (f) loss or corruption of data or information; or
- (g) special, indirect or consequential damage or loss suffered by Seller.

28. RIGHT TO AUDIT

Seller shall establish and maintain a reasonable accounting system, which enables ready identification of Seller's cost of goods and overall performance under each Order. Any authorised representative of Buyer or Buyer's customer shall have reasonable access to all plants, facilities and records of Seller and any of Seller's subcontractors for the purpose of auditing and verifying Seller's records, procedures, policies, and its performance under each Order. Any such audit rights shall continue until the expiration of five (5) years after Seller's receipt of final payment from Buyer, or such extended period as required by applicable law or in connection with any arbitration or legal proceedings under an Order.

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29. INSURANCE

In addition to any other insurance that Buyer shall require under an Order, Seller shall maintain, at its own cost and expense, such insurance of the types and in the amounts (a) as is standard and reasonable in the applicable industry; (b) as is necessary to insure all of Seller's obligations under any Order; and (c) that sufficiently will protect Buyer from all claims for damages to persons and property that may arise from any operations under an Order or permitted subcontracts related to an Order.

30. INDEPENDENT CONTRACTOR

Seller represents that it is fully experienced, properly qualified, registered, licensed, equipped, organised, and financed to perform its obligations under each Order. Seller shall act as an independent contractor and not as the agent of Buyer in performing each Order, maintaining complete control over its employees and all of its lower-tier associates, suppliers and permitted subcontractors. Nothing contained in any Order or these Terms and Conditions or any lower-tier purchase order or subcontract awarded by Seller shall create any contractual relationship between any lower-tier associate, supplier or subcontractor and Buyer.

31. HAZARDOUS MATERIALS

Seller must package and label all goods supplied under any Order in compliance with all applicable laws and regulations. Without limiting the foregoing, Seller shall notify Buyer of all goods ordered under any Order which contain material hazardous or injurious to the health or physical safety of persons or which may damage the environment, even though said hazard or injury may only occur due to mishandling or misuse of the goods. In addition, Seller shall identify the hazardous or injurious material and notify Buyer of the effects of such material on human beings and the physical manifestations that could result. For each good or product so identified, Seller shall supply Buyer with warning labels or instructional material appropriate to warn persons coming in contact therewith of the hazard and their effects.

32. SEVERABILITY

If any portion or provision hereof or of any Order shall to any extent be held invalid or unenforceable, the remainder hereof or the application of such portion or provision in circumstances, other than those in which it is held invalid or unenforceable, shall not be affected thereby, and each portion or provision hereof and thereof shall be valid and enforceable, to the fullest extent permitted by law.

33. HEADINGS

The headings in these Terms and Conditions are for convenience only and shall not be used to interpret or modify its meaning.

34. ENTIRE AGREEMENT

Each Order and these Terms and Conditions, together with documents specifically incorporated therein/herein by reference shall contain the entire and only agreement of the parties concerning the goods or services ordered and supersedes all and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter

35. ANTI-BRIBERY COMPLIANCE

Without prejudice to the generality of Seller's obligations pursuant to clause 21, the Seller shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-money laundering, including but not limited to the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010, and the UK Proceeds of Crime Act 2002 ("Relevant Requirements");
- (b) not engage in any activity, practice or conduct which would constitute an offence under the UK Bribery Act 2010 or UK Proceeds of Crime Act 2002 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;

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(d) promptly report to the Buyer evidence of any offer, request or demand for any undue financial or other advantage of any kind in connection with any Order;

(e) immediately notify the Buyer (in writing) if a foreign public official is or becomes an officer or employee of the Seller or acquires a direct or indirect interest in the Seller;

(f) provide annual written certification to the Buyer signed by an officer of the Seller, of compliance with this clause 35 by the Buyer and all persons associated with it. The Seller shall provide such supporting evidence of compliance as the Buyer may reasonably request.

The Seller shall ensure that any person associated with the Seller who is performing services or providing goods in connection with any Order does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Seller in this clause 35 (the "Relevant Terms"). The Seller shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Buyer for any breach by such persons of any of the Relevant Terms.

For the purpose of this clause 35, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 35 a person associated with the Seller includes but is not limited to any subcontractor of the Seller.

36. LIMITATION OF LIABILITY

Nothing in this agreement shall limit or exclude the liability of either party for:

- (a) death or personal injury resulting from negligence; or
- (b) fraud or fraudulent misrepresentation.

37. SURVIVAL

Clauses 11, 13, 17, 18, 21, 22, 23, 27, 28, 30, 32, 33, 34, 35, 36 and 37 of these Terms and Conditions shall survive and continue to apply to each order following any termination or the expiry of such order.

38. COUNTERPARTS

Any and all Orders may be signed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument and shall become binding when executed by each party hereto.