

TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. INTERPRETATION

1.1 The following definitions and rules of interpretation in this clause apply in this Agreement.

ADR notice: has the meaning given in clause 20.1.

Agreement: means the contact between USC and the Customer which is made up of these Terms and any documents referred to herein.

Artwork Approval Document: the document containing digital proofs of the Goods.

Business Day: a day, other than a Saturday, Sunday or public holiday in England.

CEDR: means the Centre for Effective Dispute Resolution.

Commencement Date: the date on which this Agreement comes into force.

Confidential Information: any information of a confidential nature concerning the business, affairs, customers, clients or suppliers of the other party including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

Currency: has the meaning given in clause 9.2.

Customer: means the party which purchases the Goods from USC.

Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation and **Data Controller, Data Processor, Data Subject** and **Personal Data** shall take the meanings given to them in the Data Protection Legislation.

Delivery: completion of delivery of the Goods in accordance with clause 6. **Deliver** and **Delivered** shall be construed accordingly.

Delivery Location: the address set out in the Purchase Order, as otherwise agreed between the parties, or if no address is set out or agreed then the registered address of the Customer.

Dispute: has the meaning given in clause 20.1.

Dispute Notice: has the meaning given in clause 20.1.

Errors: has the meaning given in clause 2.5.

Expert: has the meaning given in clause 11.1.

Further Documentation: has the meaning given in clause 2.4.

Goods: the goods (or any part of them) as set out in the Purchase Order which are ordered by and supplied to the Customer.

Incoterm: means Incoterms 2010.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and

protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

Loss: means charges, claims, costs, damages, demands, expenses, fees, liabilities, losses and proceedings.

month: a calendar month.

Purchase Order: an order for Goods submitted by the Customer to USC.

Price: the price of the Goods as set out in the Sales Order, or, if no price is quoted, the price set out in USC's published price list in force as at the Commencement Date or any other price notified by USC to the Customer in advance of the Commencement Date.

Purchase Order Date: means the date specified on the Purchase Order.

Representatives: has the meaning given in clause 15.2.

Sales Order: a document issued by USC to signify its acceptance of a Purchase Order.

Specification: any specification of the Goods as referred to in the Sales Order.

Storage Charge: means £10 + VAT per box.

Term: the term of the Agreement, from the Commencement Date until such time as the Customer has paid any and all sums due to USC under this Agreement or any other agreement between the parties.

Terms: means these terms and conditions.

USC: means the party whose details set out in the footer below.

VAT: value added tax chargeable in the UK.

Warranty Period: the period of 6 months from Delivery of such other period of time specified within the Sales Order. Clause headings shall not affect the interpretation of this Agreement.

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A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

This Agreement shall be binding on, and ensure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2. FORMATION OF CONTRACT**
- 2.1 Any quoted price for the Goods is not an offer by USC to the Customer but for the avoidance of doubt shall only remain valid for a period of 20 Business Days from the date it is given. For the avoidance of doubt, if the Customer does not make a Purchase Order within 30 days of any quote, that quote shall be deemed to have expired.
- 2.2 USC shall be free at its absolute discretion as to whether it accepts or rejects any Purchase Order. No Purchase Order shall be deemed to be accepted by USC until it issues a Sales Order or (if earlier) USC notifies the Customer that the Purchase Order is ready for delivery.
- 2.3 In the case of there being any inconsistency between the Sales Order and these Terms, the Sales Order shall be deemed to take precedence. Any concession made or latitude allowed by USC to the Customer shall not affect the strict rights of USC under this Agreement. If in any particular case any of these conditions shall be held to be invalid or shall not apply to the Agreement the other conditions shall continue in full force and effect.
- 2.4 The Customer shall supply USC at its own expense with any and all necessary documents, drawings or other materials, data or other information relating to the Goods to be supplied by USC which USC requests or which a reasonable business person in the same position as the Customer would reasonably consider that USC may require in connection with the supply of the Goods (**'Further Documentation'**) and in providing any Further Documentation to USC, the Customer:
- 2.4.1 warrants that they are accurate and up to date in all respects; and
- 2.4.2 acknowledges and agrees that USC may make any appropriate adjustments to Delivery and/or the Price that it deems necessary, where the Further Documentation is provided to USC after the date of issue by USC of any quotation.
- 2.5 Where there are any errors and/or omissions (**'Errors'**) in a quotation, the Customer must notify USC of this fact, together with full particulars of any such Errors without delay.
- 3. MANUFACTURE, QUALITY AND PACKING – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**
- 3.1 USC shall supply the Goods in accordance with all generally accepted industry standards and practices that are applicable.
- 3.2 The Goods supplied to the Customer by USC under this Agreement shall:
- 3.2.1 conform to the Specification (if any);
- 3.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by USC;
- 3.2.3 be free from defects in design, material and workmanship and remain so for the Warranty Period; and
- 3.2.4 comply with all applicable statutory and regulatory requirements.
- 3.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.
- 3.4 USC shall ensure that the Goods are properly packed and secured in a manner to enable them to be Delivered in good condition.
- 3.5 **USC reserves the right to consider a Purchase Order settled in the event that the positive or negative variation in the quantity of Goods ordered is no more than 10%. In the event that there is a negative quantity variation then USC shall only invoice the Customer for the actual number of Goods produced.**
- 3.6 USC shall send the Artwork Approval Document to the Customer for approval and shall either be approved or rejected by the Customer within 5 Business Days. In the event that the Customer fails to reject the Artwork Approval Document within that time period they shall be deemed to have been accepted and USC shall not be liable for any issues raised by the Customer thereafter. Where the Customer rejects the Artwork Approval Document it must provide USC with reasons and required amendments following which USC shall use reasonable endeavours to implement changes as close to the Customer's requirements as practicable. The Customer agrees and acknowledges that images, colours and textures appearing within the Artwork Approval Document may differ to the physical appearance of the Goods due to circumstances including subjective views and the settings of the screen on which the Artwork Approval Document is viewed and that USC shall not be liable to the Customer in such circumstances.
- 3.7 The Customer warrants that the supply of the Goods shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the packing, packaging, marking, storage, handling, and delivery of the Goods in the territory in which it is based and that they are not subject to any trade embargo.
- 3.8 The Customer agrees that USC will not be liable for any failure to perform its obligations under this Agreement where such non-performance arises out of or in connection with the Customer's failure or delay to comply

with this Agreement and in such circumstances, the Customer agrees and acknowledges that USC may charge the Storage Charge for each day (or part day), for which it is prevented or delayed from performing its obligations as a result of the Customer's failure or delay.

4. CUSTOMER OBLIGATIONS

- 4.1 The Customer acknowledges and agrees that it shall be required to obtain and upon request to:
- 4.1.1 provide USC with evidence of all necessary consents, permissions, approvals and licenses to enable USC to perform its obligations under this Agreement;
- 4.1.2 comply as soon as reasonable practicable with all such other of USC's requests from time to time.
- 4.2 In performing its obligations under the Agreement, the Customer shall comply with all applicable laws, statutes, regulations and codes from time to time in force.
- 4.3 The Customer warrants that it shall not conceal anything from USC and that all information, designs, measurements, facts and documentation provided by it to USC are accurate, true and do not infringe the rights of any third party and agrees that USC shall not be liable in any way for any Loss caused by USC's reliance on such information, measurements, facts and documentation or where the Customer has been found to have concealed anything including but not limited to where USC's use of such information, designs, measurements, facts and documentation breaches a third party's Intellectual Property Rights.
- 4.4 In the event that the Customer wishes to cancel any Purchase Order for the Goods following the issuance of the Sales Order then it shall remain liable to pay for 100% of the Price of the Goods to USC.

5. DATA PROTECTION AND DATA PROCESSING

- 5.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 5.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and USC is the Data Processor.
- 5.3 Without prejudice to the generality of clause 5.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to USC for the duration and purposes of the Agreement.
- 5.4 Without prejudice to the generality of clause 5.1, USC shall, in relation to any Personal Data processed in connection with the performance by USC of its obligations under the Agreement:
- 5.4.1 process that Personal Data only on the written instructions of the Customer unless USC is required by the Data Protection Legislation to otherwise process that Personal Data. Where USC is relying on laws of a member of the EU or EU law as the basis for processing Personal Data, it shall promptly notify the Customer of this before

- performing the processing required by the applicable laws unless USC is so prohibited from notifying the Customer;
- 5.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 5.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 5.4.4 not transfer any Personal Data outside of the EEA unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Customer or USC has provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) USC complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) USC complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 5.4.5 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by applicable law to store the Personal Data; and
- 5.4.6 maintain complete and accurate records and information to demonstrate its compliance with this clause.
- 5.5 The Customer consents to USC appointing third parties as a third-party processor of Personal Data under the Agreement. USC confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause. As between the Customer and USC, USC shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause.
- #### 6. DELIVERY
- 6.1 Delivery is completed in accordance with the specified Incoterm in the quotation or, if no Incoterm is specified, shall be taken as EXW. In the event of delivery to an

- international destination, references to the Incoterm EXW shall be substituted for the Incoterm FCA and the Customer agrees and acknowledges that the Goods may be subject to certain import costs, duties, taxes, levies and laws and regulations of the country for which the Goods are destined ('Import Laws'). In the event that the Customer requires USC's assistance in relation to complying with any Import Laws, USC reserves the right to charge for the provision of such assistance.
- 6.2 By entering into this Agreement, the Customer warrants that it is aware of all applicable Import Laws and that it shall be responsible for all associated import costs, duties, taxes and levies and that USC does not have any control over these. USC will not be responsible or liable for compliance with the Import Laws, nor if the Customer breaches any Import Law. The Customer agrees that it shall indemnify USC for any Loss that USC incurs as a result of any breach of the Import Laws.
- 6.3 For the avoidance of doubt Delivery may be made in any number of instalments as USC deems necessary. Such partial shipments may be invoiced separately and shall be paid for when due, without regard to subsequent shipments. Delay in shipments or delivery of any particular instalment shall not relieve the Customer of its obligation to accept subsequent instalments.
- 6.4 Whilst USC may provide the Customer with projected Delivery dates, time for Delivery shall not be of the essence and any delays in the Delivery shall **not** entitle the Customer to:
- 6.4.1 refuse to take receipt of the Goods;
- 6.4.2 claim damages; or
- 6.4.3 terminate this Agreement, subject always to clause 16, USC shall have no liability for any failure or delay in delivering the Goods to the extent that any failure or delay is caused by the Customer's failure to comply with its obligations under this Agreement.
- 6.5 If the Customer fails to take receipt of the Goods then, except where that failure or delay is caused by USC's failure to comply with its obligations under this Agreement, USC shall store the Goods until physical possession of the Goods passes to the Customer and charge the Storage Charge to the Customer for each day (or part day) for which it is required to store the Goods.
- 6.6 Each Delivery of Goods shall be accompanied by a delivery note from USC.
- 6.7 Packaging materials shall remain USC's property and the Customer shall make them available for collection at any times as USC shall reasonably request. Returns of packaging materials shall be at the Customer's expense.
- 7. ACCEPTANCE AND DEFECTIVE PRODUCTS**
- 7.1 The Customer may reject any Goods delivered to it that do not comply with clause 3.2, provided that:
- 7.1.1 notice of rejection is given to USC:
- (a) in the case of a defect that is apparent on normal visual inspection, within one Business Day of receiving the Goods;
- (b) in the case of a latent defect, within five Business Days of the latent defect having become apparent; and
- 7.1.2 none of the events listed in clause 7.3 apply.
- 7.2 If the Customer fails to give notice of rejection in accordance with clause 7.1, it shall be deemed to have accepted these Goods.
- 7.3 USC shall not be liable for a Goods' failure to comply with the warranty set out in clause 3.2 in any of the following events:
- 7.3.1 the Customer makes any further use of those Goods after giving notice in accordance with clause 7.1;
- 7.3.2 the defect arises because the Customer failed to follow USC's (or any of USC's suppliers) oral or written instructions for the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 7.3.3 the defect arises as a result of USC following any drawing, design or Specification;
- 7.3.4 the Customer alters or repairs those Goods without the written consent of USC;
- 7.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 7.3.6 the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.4 If the Customer rejects Goods under clause 7.1 then USC shall notify the Customer as to whether it wishes the Customer to return the Goods to it or whether it intends to come and inspect the Goods. At its absolute discretion, USC be entitled to:
- 7.4.1 repair or replace the rejected Goods; or
- 7.4.2 provide an adequate level of refund (to be determined at the absolute discretion of USC) to the Customer, with no further liability to the Customer for the rejected Goods' failure to comply with clause 3.2.
- 7.5 The terms of this Agreement shall apply to any repaired or replacement Goods supplied by USC.
- 7.6 The rejection of a shipment of Goods shall not entitle the Customer to reject further shipments of the Goods. Where the Customer rejects a part shipment of Goods, the Customer shall not be entitled to reject all of the shipment or further shipments.
- 7.7 If the parties dispute whether any Goods comply with clause 3.2, either party may refer the matter to an Expert for determination in accordance with clause 11.
- 8. TITLE AND RISK – PARTICULAR ATTENTION IS DRAWN TO THIS CLAUSE**
- 8.1 Without regard to which party arranges or pays for insurance, from the time of Delivery the Goods shall be at the risk of the Customer which shall be solely responsible for their custody and maintenance.
- 8.2 Unless otherwise expressly agreed in writing, title to the Goods shall remain with USC and shall not pass to the Customer until all payments due under this Agreement and any other contract or agreement between the parties

- have been made by the Customer to USC in full (in cash or cleared funds) and unconditionally.
- 8.3 Until such time as title to the Goods has passed to the Customer, the Customer shall:
- 8.3.1 keep the Goods insured (with a reputable insurance company) to their full value comprehensively against anything required by law, all usual risks of loss, damage or destruction by fire, theft or accident, to cover any third party or public liability risks and such other risks as USC may from time to time nominate and do so on USC's behalf whereby and for the avoidance of doubt the Customer shall obtain an endorsement of USC's interest in the Goods on its insurance policy;
- 8.3.2 use the Goods only for the purpose for which they were supplied;
- 8.3.3 store the Goods properly and separate and identifiable from all other goods in its possession so that they remain identifiable as USC's possession;
- 8.3.4 maintain those Goods in satisfactory condition;
- 8.3.5 not sell the Goods on terms containing retention of title provisions any less stringent than those set out in this Agreement and where it does so ensure that it obtains the express permission of its customer for USC to enter onto any premises at which the Goods are located;
- 8.3.6 permit USC unobstructed access to inspect the Goods and any policy of insurance at any time; and within 1 Business Day of receipt of a request from USC, provide USC with evidence of its compliance with the obligations set out in this clause. Where the Customer fails to comply with the provisions of clause 8.3.1, USC shall be entitled to effect and maintain such insurance and recover the cost of doing so from the Customer on an indemnity basis.
- 8.4 If before title to Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 14.1 (or USC reasonably suspects that they may be due to become subject to any such events) or fails to make any payments due to USC when they fall due, then, without limiting any other right or remedy:
- 8.4.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 8.4.2 the Customer agrees and acknowledges (or, as the case may be shall use its best endeavours to procure) that USC may at any time:
- (a) require the Customer to deliver up all Goods; and/or
- (b) enter any premises of the Customer or of any third party without obstruction or hindrance (which for the avoidance of doubt shall permit USC to break entry into any of the Customer's premises) where the relevant Goods are stored to recover and resell them.
- 8.5 The Customer shall provide USC with immediate written notice in the event of any loss, accident or damage to the Goods arising out of or in connection with its possession or use of the Goods prior to title in them passing to the Customer.
- 8.6 In the event of any resale by the Customer of the Goods the beneficial entitlement of USC shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to USC and until and subject to such assignment shall be held on trust in a separate identified account for USC by the Customer who will stand in a strictly fiduciary capacity in respect thereof.
- 8.7 Any powers granted to USC in accordance with this clause are additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise. In the event that USC, its agents or subcontractors are required to take any steps to take back possession of the Goods, the Customer shall indemnify USC in respect of all costs incurred by it in exercising these rights.
- 9. PRICES AND VARIATION IN THE EVENT OF CURRENCY FLUCTUATION – PARTICULAR ATTENTION IS DRAWN TO THIS CLAUSE**
- 9.1 The Price shall be that stated in the quotation save to the extent that it is increased in accordance with these Terms.
- 9.2 In the event that between:
- 9.2.1 the giving of any quote by USC and the date of issue of a Sales Order; or
- 9.2.2 the date of the Sales Order and the earlier of:
- (a) the date of the invoice in respect; and
- (b) Delivery,
- of the Goods the value of the US Dollar or the Euro (**'the Currency'**) increases relative to the value of Pound Sterling by an amount no less than 5%, the Customer acknowledges that the financial viability of the Agreement for USC will have been sufficiently reduced and that USC may increase the Price by an amount equivalent to the increased value of the Currency relative to Pound Sterling. USC shall notify the Customer in writing of the Price increase accordingly.
- 9.3 Where USC deems it necessary to increase the Price otherwise than in accordance with clause 9.2, it shall notify the Customer in writing and, unless the Customer notifies USC of its rejection of any such increase within 2 Business Days, the Customer shall be deemed to have accepted the Price increase in all respects. Where the Customer rejects the Price increase, either party may terminate the Agreement but only to the extent that it relates to the Price increase with the remaining (unaffected) parts of this Agreement remaining in full force and effect.
- 9.4 Unless otherwise specified in the quotation, USC shall issue the Customer with an invoice which shall become due and payable within 30 days of the date of the invoice and in any event in advance of Delivery taking place. All invoices shall be paid in the currency specified within the invoice and in full without any set-off, counterclaim, withholding or other deduction. All invoices shall be paid via the method specified in the relevant invoice.
- 9.5 Where any payments made by the Customer result in USC incurring bank charges or currency conversion

- charges, USC reserves the right to upwardly adjust the amounts payable to it by the Customer.
- 9.6 All sums payable under the Agreement are, unless otherwise stated, exclusive of VAT, which is chargeable additionally. For the avoidance of doubt, if the rate of VAT changes between the date on which the Agreement is formed and the date of the invoice, USC will charge VAT at the new rate.
- 9.7 In the event that the Customer wishes to query or dispute any invoice then it must do so within 5 Business Days of the date of the invoice, otherwise it shall be deemed to have been accepted as correct and payable to USC. In the event of any query or dispute being raised by the Customer about an invoice then this is without prejudice to the Customer's obligation to pay such invoice when it falls due. In circumstances where the Customer pays an invoice which it queries or disputes and USC agrees that such query or dispute was justified then USC shall issue a refund of such payment within 5 Business Days of such agreement.
- 9.8 USC may at any time and without notice to the Customer, set off any liability of USC against any liability of the Customer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises or has arisen under this Agreement. If the liabilities to be set off are expressed in different currencies, USC may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by USC of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.
- 10. LATE PAYMENT**
- 10.1 If the Customer fails to pay any money due to USC on time, USC may immediately cease to take orders from and to deliver Goods to the Customer and thereafter impose whatever credit limit it considers appropriate in respect of future dealings.
- 10.2 Without prejudice to any other rights it may have, USC is entitled to charge interest on any overdue sum at the rate of 8% above the base rate from time to time of Barclays Bank plc.
- 10.3 All payments payable to USC by the Customer under this Agreement shall become immediately due and payable:
- 10.3.1 on termination of this Agreement for any reason; or
- 10.3.2 if the Customer becomes subject to any of the events listed in clauses 16.1.4 – 16.1.6 inclusive.
- This clause is without prejudice to any right to claim for interest under the law or under this Agreement.
- 11. EXPERT DETERMINATION**
- 11.1 An Expert is a person appointed in accordance with this clause 11 to resolve certain matters as specified in this Agreement.
- 11.2 Where under this Agreement a party wishes to refer a matter to an Expert, the parties shall first agree on the appointment of an independent Expert and agree with the Expert the terms of his appointment.
- 11.3 Where the parties propose to appoint an Expert, the Expert shall be appointed by CEDR.
- 11.4 The Expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to the Expert.
- 11.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause 11, then:
- 11.5.1 either party may apply to CEDR to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- 11.5.2 this clause 11 shall apply to the new Expert as if they were the first Expert appointed.
- 11.6 All matters to be determined in accordance with this clause 11 must be conducted, and the Expert's decision shall be written, in the English language.
- 11.7 The parties are entitled to make submissions to the Expert and will provide (or procure that others provide) the Expert with any assistance and documents as the Expert reasonably requires to reach a decision.
- 11.8 To the extent not provided for by this clause 11, the Expert may, in their reasonable discretion, determine any other procedures to assist with the conduct of the determination as the Expert considers just or appropriate.
- 11.9 Each party shall with reasonable promptness supply each other with all information and give each other access to all documents, personnel and things as the other party may reasonably require to make a submission under this clause 11.
- 11.10 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the matters referred to the Expert under the Agreement. The Expert's written decision on the matters referred to the Expert shall be final and binding on the parties in the absence of manifest error or fraud.
- 11.11 The Expert's fees and any costs properly incurred by the Expert in arriving at the Expert's determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties equally or in any other proportions as the Expert shall direct.
- 11.12 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
- 11.13 Each party shall act reasonably and co-operate to give effect to the provisions of this clause 11 and otherwise do nothing to hinder or prevent the Expert from reaching their determination.
- 11.14 The Expert and shall have no liability to the parties for any act or omission in relation to this appointment, save in the case of bad faith.
- 12. INTELLECTUAL PROPERTY**
- 12.1 The Intellectual Property Rights in any Goods materials and other documents or items prepared or produced for the Customer by or on behalf of USC arising out of or in connection with this Agreement shall belong to USC

- absolutely and any such materials, documents or items shall be or remain the sole property of USC.
- 12.2 The Customer shall be entitled to use as a licensee any such materials, documents or other items as are referred to in clause 12.1 above in connection with the Goods but shall not be entitled to copy any such items or use them for any commercial purpose unless agreed otherwise in writing between the parties.
- 13. LIMITATION OF LIABILITY AND INDEMNITY – PARTICULAR ATTENTION IS DRAWN TO THIS CLAUSE**
- 13.1 USC shall not be liable to the Customer in contract, tort (including negligence), breach of statutory duty or otherwise for any Loss whatsoever incurred or suffered by the Customer of an indirect, special or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill.
- 13.2 Except in the case of death or personal injury caused by USC's negligence, USC's liability under or in connection with this Agreement, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed the total sum of payments received by USC from the Customer under this Agreement during the preceding 12 month period.
- 13.3 The Customer shall within 2 Business Days of becoming aware of such event, notify USC in writing of the potential Loss that may result and the likely estimated cost of such Loss such that USC is able to take the requisite steps in order to mitigate its potential liability and the Customer agrees and acknowledges that where it failure to do so USC shall not be liable to the Customer in respect of any such Loss.
- 13.4 USC shall have no liability to the Customer for any Loss arising from any instructions or drawings supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault or breach of its obligations by the Customer.
- 13.5 The Customer shall indemnify, keep indemnified and hold harmless USC from and against any and all Loss, including that of an indirect, special or consequential nature and any economic loss or other loss of turnover, profits, business or goodwill whether arising in contract, tort (including negligence), breach of statutory duty or otherwise for breach of its obligations under this Agreement.
- 14. ASSIGNMENT AND OTHER DEALINGS**
- 14.1 The Customer shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of USC (such consent not to be unreasonably withheld or delayed).
- 14.2 USC may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this Agreement, provided it gives written notice to the Customer.
- 14.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 14.4 Notwithstanding clause 12, a party assigning any or all of its rights under this Agreement may disclose to a proposed assignee any information in its possession that relates to this Agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 14.4 shall be made until notice of the identity of the proposed assignee has been given to the other party.
- 15. CONFIDENTIALITY**
- 15.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information, except as permitted by clause 15.2.
- 15.2 Each party may disclose the other party's Confidential Information:
- 15.2.1 to its employees, officers, agents, consultants or subcontractors ('**Representatives**') who need to know this information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 14.1 as though they were a party to this Agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause 14.1; and
- 15.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party or to be implied from this Agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.
- 16. TERMINATION AND SUSPENSION**
- 16.1 Without affecting any other right or remedy available to it, USC may terminate this Agreement with immediate effect by giving written notice to the Customer if:
- 16.1.1 the Customer fails to pay any undisputed amount due under this Agreement on the due date for payment and remains in default not less than 5 Business Days after being notified in writing to make such payment;
- 16.1.2 the Customer commits a material breach of any other term of this Agreement and that breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of 5 Business Days after being notified in writing to do so;
- 16.1.3 the Customer repeatedly breaches any of the terms of this Agreement in such a manner to reasonably justify the

- opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 16.1.4 the Customer goes into compulsory liquidation, ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, liquidator, administrator or administrative receiver appointed over all or any part of its assets or undertaking, or enters into any composition or arrangement, with its creditors or makes any application for a moratorium under the terms of section 1A and Schedule A1 to the Insolvency Act 1986 as amended by the Insolvency Act 2000 or takes any similar action or suffers any other similar event or undergoes any process analogous to the foregoing in any jurisdiction throughout the world;
- 16.1.5 the Customer (being an individual) is declared bankrupt or a petition is presented for his bankruptcy or (where the Customer is a partnership) any partner is declared bankrupt or a petition is presented for his bankruptcy;
- 16.1.6 any distress is levied or threatened against any of the assets of the Customer;
- 16.1.7 the Customer being a natural person dies or becomes mentally incapable;
- 16.1.8 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.1.4 to clause 16.1.6 inclusive; or
- 16.1.9 the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business.
- 16.2 Without limiting its other rights or remedies, USC may suspend provision of the Goods under the Agreement or any other contract between the Customer and USC if the Customer becomes subject to any of the events listed in clause 16.1, or USC reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Agreement on the due date for payment.
- 17. CONSEQUENCES OF TERMINATION**
- 17.1 In the event of termination of this Agreement howsoever arising:
- 17.1.1 any accrued rights, remedies, obligations and liabilities of USC as at termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination; and
- 17.1.2 USC may issue an invoice in respect of any work undertaken under this Agreement for which it has not already;
- 17.1.3 the Customer shall immediately pay to USC all arrears of payments and any other sums due under the terms of the Agreement;
- 17.1.4 the Customer shall destroy or, at the request of USC, return all information and materials belonging to USC and shall not retain any copies of the same unless otherwise agreed.
- 17.2 Those terms which by implication are to remain in full force and effect following the termination of this Agreement shall continue to have such effect.
- 17.3 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of the Agreement that existed at or before the date of termination.
- 18. FORCE MAJEURE**
- USC shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of USC or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.
- 19. SEVERANCE**
- 19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If that modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to, or deletion of, a provision or part-provision under this clause 19 shall not affect the validity and enforceability of the rest of this Agreement.
- 19.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE**
- 20.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ('Dispute') then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause 20:
- 20.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ('Dispute Notice'), together with relevant supporting documents. On service of the Dispute Notice, the named contacts of each party shall attempt in good faith to resolve the Dispute;
- 20.1.2 if the named contacts of each party are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the

- directors of each party who shall attempt in good faith to resolve it; and
- 20.1.3 if the directors of each party are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 15 Business Days service of the Dispute Notice the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ('**ADR notice**') to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 20 Business Days after the date of the ADR notice.
- 21. FURTHER ASSURANCE**
At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.
- 22. VARIATION**
No variation of this Agreement shall be effective unless it is in writing and signed by both parties (or their authorised representatives).
- 23. WAIVER**
23.1 A waiver of any right or remedy under this Agreement or by law shall only be effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
23.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
23.3 A party that waives a right or remedy provided under this Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.
- 24. NOTICES**
24.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be delivered by:
24.1.1 hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
24.1.2 by email to any address notified to the other party in writing.
24.2 Any notice or communication shall be deemed to have been received:
- 24.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
24.2.2 if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
24.2.3 if sent by email at 9:00 am on the second Business Day after transmission.
24.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 25. ENTIRE AGREEMENT**
25.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
25.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
25.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
25.4 Nothing in this clause 25 shall limit or exclude any liability for fraud.
- 26. NO PARTNERSHIP OR AGENCY**
Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 27. THIRD PARTY RIGHTS**
This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 28. GOVERNING LAW AND JURISDICTION**
28.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
28.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).