

Circadacare

TERMS & CONDITIONS of SALE

1. DEFINITIONS

In these Terms and Conditions of Sale (the '**Conditions**') the following words and expressions are expressly defined and shall have the following meanings:

'Buyer' means the person, firm or company who purchases the Goods and/or Services from the Company;

'Company' means CIRCADIAN Lighting Limited, trading as Circadacare, a company registered in England and Wales with number 12850554 and whose registered office is at Tanfield Lea Industrial Estate North, Tanfield Lea, Stanley, England DH9 9DB;

'Contract' means any contract between the Company and the Buyer for the sale and purchase of the Goods and/or the provision of Services, incorporating these Conditions;

'Delivery Point' means the place where delivery of the Goods is to take place under Condition 6;

'Goods' means any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them); and

'Services' means any services agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

2. INTERPRETATION

In these Conditions, save where the context otherwise requires:

- 2.1. the singular includes the plural and vice versa and a reference to any gender includes a reference to all other genders;
- 2.2. headings and the use of bold typeface shall be ignored;
- 2.3. a reference to a statute or statutory provision shall include a reference to that statute or provision as from time to time consolidated, modified, re-enacted or replaced by any statute or statutory provision;
- 2.4. to any repealed statute or statutory provision which it re-enacts (with or without modification); and any subordinate legislation made under the relevant statute;
- 2.5. if a period of time is specified and dates from a given day or the day of an act or event, it shall be calculated exclusive of that day;
- 2.6. a reference to any English legal term (including any statute, statutory instrument, resolution, by-law or other requirement) for any action, remedy, method or judicial proceeding, legal or constitutional document, legal status, procedure, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include that which most nearly approximates in that jurisdiction to the relevant English legal term;
- 2.7. a reference to a person includes a reference to a firm or a body corporate; and
- 2.8. references to writing shall include any modes of reproducing words in a legible and non-transitory form.

3. CONTRACTS

- 3.1. The Contract shall be made (and without limitation orders shall only be accepted) on and subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 3.2. No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 3.3. These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing by both the Company and the Buyer. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

- 3.4. Each order or purported acceptance of a quotation for Goods and/or Services by the Buyer to the Company shall be deemed to be an offer by the Buyer to purchase Goods and/or Services from the Company subject to these Conditions.
- 3.5. Any quotation, estimate or tender previously given or made by the Company (including the contents of the Company's website) shall not be deemed to be an offer but rather an invitation to treat.
- 3.6. No order placed by the Buyer (including by use of the Company's website) shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer and/or performs the Services for the Buyer.
- 3.7. The Company may, at its absolute discretion, accept or reject any order placed by the Buyer.
- 3.8. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 3.9. Any typographical, clerical or other error or omission in the Company's website or in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

4. ONLINE SALES

- 4.1. The contents of the Company's website describing the Goods that the Company sells and/or the Services that the Company performs, including without limitation prices, images, descriptive matter, specifications and advertising copy, are not an offer but are an invitation to treat.
- 4.2. When, if applicable, the Buyer clicks on the 'Submit' button on the Company's website, the Buyer shall be deemed to accept these Conditions and:
- 4.3. Pursuant to Condition 3.4 above, each order or purported acceptance by the Buyer of prices for Goods and/or Services quoted on the Company's website shall be deemed to be an offer by the Buyer to purchase Goods and/or Services subject to these Conditions;
- 4.4. Pursuant to Condition 3.6 above, no order placed by the Buyer by use of the Company's website, nor the mere receipt of such an order via the Company's website, shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer and/or performs the Services for the Buyer;
- 4.5. The Company's ability to enter into a Contract for the supply of Goods and/or the provision of Services advertised on the Company's website, and the accuracy of any information given in the website, are in general terms subject to availability of the Goods and/or Services and (in the case of Goods) information supplied by their manufacturers (respectively). The Company may amend the website and its contents at any time without incurring any liability whatsoever to the Buyer, including without limitation by amending at any time the Goods and/or Services advertised and the price and description thereof shown on the website; and
- 4.6. Pursuant to Condition 3.7 above, the Company may, at its absolute discretion, accept or reject any order placed by the Buyer by use of the Company's website.

5. DESCRIPTION

- 5.1. The quantity and description of the Goods and/or Services shall be as set out in the Company's written acknowledgement of order.
- 5.2. All samples, colour charts, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or
- 5.3. brochures, are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them and (in the case of Goods) are not to scale. The said matters shall not form part of the Contract and no sale of Goods is a sale by sample. No responsibility is accepted by the Company for any errors or omissions in any of them or for any loss or damage resulting from reliance on them, and the Company reserves the right to correct any such errors or omissions without any liability on the part of the Company.

6. DELIVERY OF GOODS AND SUPPLY OF SERVICES

- 6.1. Unless otherwise agreed in writing by the Company, delivery of any Goods shall take place at the Company's place of business and the Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.
- 6.2. Any dates quoted by the Company for delivery of the Goods and/or supply of Services are approximate only and intended to be an estimate. Time for delivery of Goods and/or supply of Services shall not be made of the essence by notice and time for delivery and/or supply of Services may only be made of the essence if expressly agreed by the Company in writing within a written acknowledgement of order issued by the Company. If no dates are so specified, delivery shall be within a reasonable time.
- 6.3. Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of contracts, damage to property, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or supply of Services (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.
- 6.4. If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations then without prejudice to any other right or remedy available to the Company:
- 6.5. risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- 6.6. the Goods shall be deemed to have been delivered; and
- 6.7. the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 6.8. Where the Delivery Point is agreed in writing by the Company to be a place other than the Company's place of business, the Company's obligation is then only to deliver as near to the Delivery Point as safe hard roads permit.
- 6.9. The Buyer shall provide at the Delivery Point adequate and appropriate equipment and manual labour for loading and stacking the Goods at the Buyer's expense.
- 6.10. the Company may deliver the Goods by separate instalments and in such event each separate instalment shall:
- 6.11. be a separate Contract and:
 - 6.11.1. no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment; and
 - 6.11.2. the Company may withhold the delivery of any other instalment or Contract until Goods contained in any earlier instalment or Contract have been paid for in full; and
 - 6.11.3. be invoiced and paid for in accordance with the provisions of the Contract.
- 6.12. The Buyer shall not be entitled to accept part only of the Goods.

7. NON-DELIVERY OF GOODS

- 7.1. The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 7.2. On delivery, the Buyer shall examine the Goods for defects and completeness. In all cases a signature stating 'unexamined' or like words shall be deemed to be an unconditional acceptance of the Goods.
- 7.3. The Company shall not be liable for any shortage in delivery of Goods, for loss of Goods or for non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of such shortage in delivery, loss of Goods or non-delivery of Goods (as applicable), within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 7.4. Any liability of the Company for shortage in delivery of Goods, loss of Goods or non-delivery of Goods shall be limited to replacing the Goods within a reasonable time or (at the Company's sole option) issuing a credit note or refunding the price at the pro rata Contract rate against any invoice raised for such Goods.
- 7.5. Subject as stated in clause 7.4 and subject to the other provisions of these Conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include,

without limitation, pure economic loss, loss of profits, loss of business, loss of contracts, damage to property, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any shortage in delivery of Goods, loss of Goods or non-delivery of Goods (even if caused by the Company's negligence).

8. RISK AND TITLE

- 8.1. The Goods are at the risk of the Buyer from the time of delivery.
- 8.2. Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, ownership of the Goods and/or property in the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
 - 8.2.1. the Goods; and
 - 8.2.2. all other sums which are or which become due to the Company from the Buyer on any account (including without limitation as a result of the provision of Services).
- 8.3. Until such time as ownership of the Goods and/or property in the Goods passes to the Buyer, the Buyer shall:
 - 8.3.1. hold the Goods as the Company's fiduciary agent and bailee;
 - 8.3.2. store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 8.3.3. not destroy, deface, or obscure any identifying mark or packaging on or relating to the Goods; and
 - 8.3.4. maintain the Goods in satisfactory condition and keep them protected and insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall promptly produce the policy of insurance to the Company.
- 8.4. The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
 - 8.4.1. any sale shall be effected in the ordinary course of the Buyer's business at full market value;
 - 8.4.2. any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and
 - 8.4.3. the Buyer shall account to the Company for the proceeds of sale of the Goods and until then shall keep all such proceeds separate from any monies or property of the Buyer.
- 8.5. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 8.6. The Buyer's right to possession of the Goods shall terminate immediately if:
 - 8.6.1. the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - 8.6.2. the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 8.6.3. the Buyer encumbers or in any way charges any of the Goods.
- 8.7. The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

- 8.8. Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 8.9. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 8 shall remain in effect.

9. PRICES

The price for Goods and/or Services:

- 9.1. shall (in the case of Goods) be the price set out in the Company's price list published on the date of delivery or deemed delivery (whether or not the same accords with the price displayed on the Company's website) or (if different) the price set out in the Company's written acknowledgement of order; and
- 9.2. shall (in the case of Services) be the price set out in the Company's written acknowledgement of order or (if there is no such price set out) the price the Company would customarily charge for such Services; and
- 9.3. shall be exclusive of:
 - 9.3.1. any value added tax;
 - 9.3.2. all costs or charges in relation to packaging, loading, unloading, carriage and insurance;
 - 9.3.3. any other sales tax or excise duties paid or payable by the Company.
- 9.4. In the event of the Buyer cancelling a part of the order in accordance with the provisions of Condition 16, the Company reserves the right to revise the price or prices quoted for Goods already delivered and/or Services already provided.

10. TERMS OF PAYMENT

- 10.1. Unless credit facilities have been granted to the Buyer pursuant to Condition 11, payment of the price for the Goods and/or the Services shall be due from the Buyer in cash in pounds sterling at the earlier of delivery of the Goods by the Company or provision of the said Services by the Company.
- 10.2. Time for payment shall be of the essence.
- 10.3. No payment shall be deemed to have been received until the Company has received cleared funds.
- 10.4. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 10.5. Unless otherwise expressly agreed upon in writing, no other discounts or commissions are to become due or allowable to the Buyer (any previous course of dealing between the parties notwithstanding) and in all cases the Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid Court Order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

11. LATE PAYMENT

- 11.1. If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 should such interest be higher.
- 11.2. When payment of any of the Company's invoices is overdue, the Company may suspend its performance of the Contract(s) to which the invoice relates and/or of any other Contract then subsisting between the Company and the Buyer.
- 11.3. In the event of legal action being taken by the Company against the Buyer for breach of payment obligations hereunder, the Buyer shall be responsible for all costs and disbursements incurred by the Company on a full indemnity basis.

12. CREDIT FACILITY

- 12.1. Where the Company agrees (at its sole discretion) to grant the Buyer a credit facility, payment of the price for the Goods and/or the Services shall be due from the Buyer in pounds sterling within 30 days

from the date on which an invoice in respect of the Goods and/or the Services is issued from the Company to the Buyer following delivery of the Goods or provision of the Services or, if the Company shall so require under Condition 11.2, to be paid on demand without any period of notice.

- 12.2. The Company reserves the right to withdraw or vary credit facilities at any time by summary written notice to the Buyer without either giving any reason for so doing, or thereby incurring any liability to the Buyer.
- 12.3. If the Buyer proposes to take Goods and/or Services from the Company in excess of the Buyer's credit limit, the Company may require payment in pounds sterling for such excess of Goods and/or Services at the earlier of delivery of the Goods by the Company or upon the provision of the Services.

13. QUALITY

- 13.1. Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 13.2. The Company warrants that (subject to the other provisions of these Conditions) upon delivery, Goods supplied shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979, for the following periods by type of goods, from the date of delivery:
 - 13.2.1. Circadian LED light engines and fixtures for 5 years
 - 13.2.2. Circadian LED drivers for 2 years
 - 13.2.3. Circadian control system hardware components for 2 years
- 13.3. 13.3 The Company warrants that (subject to the other provisions of these Conditions) the performance of the Services shall be conducted with reasonable care and skill and subject to these Conditions the Company will rectify any defects caused by the Services not having been conducted with reasonable care and skill provided that the defects are notified within a period of 12 months from the date of the performance of the Services.
- 13.4. The Company shall not be liable for a breach of the warranty in Condition 13.2 unless:
 - 13.4.1. the Buyer gives written notice of the defect to the Company, and to the carrier if the defect is as a result of damage in transit, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
 - 13.4.2. the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost (should the notice of defect prove accurate, or at the Buyer's cost if not) for the examination to take place there.
- 13.5. The Company shall not be liable for a breach of the warranty in Condition 13.2 if:
 - 13.5.1. the Buyer makes any further use of such Goods after giving such notice; or
 - 13.5.2. the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, transportation, installation, commissioning, modification, use or maintenance of the Goods or (if there are none) good trade practice; or
 - 13.5.3. (and to the extent that) the defect comprises, or arises from, the corrosion of metal parts or the failure of the Buyer to ensure that Goods are installed correctly; or
 - 13.5.4. the defect arises as a result of any default of, or caused by, the Buyer or (without limitation) as a result of misuse, abuse, improper installation, neglect, improper shipping by a party other than the Company; or
 - 13.5.5. the Buyer alters, repairs or modifies such Goods without the written consent of the Company; or
 - 13.5.6. the defect arises as a result of defective installation;
 - 13.5.7. the defect arises due to a cause beyond the Company's reasonable control, such as: act of God, explosion, flood, tempest, fire or accident, including without limitation lightning; war or threat of war, national emergency, sabotage, terrorism, insurrection, protest, riot, epidemic, civil disturbance or requisition; Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials; or power failure or breakdown in machinery.
- 13.6. Subject to Condition 13.4 and Condition 13.5, if any of the Goods do not conform with the warranty in Condition 13.2 the Company shall at its option repair or replace such Goods (or the defective part)

without charge for labour or parts or refund the price of such Goods at the original purchase price. The Company shall pay for return transportation to the Buyer of such repaired or replaced Goods.

13.7. If the Company complies with Condition 13.6 it shall have no further liability for a breach of the warranty in Condition 13.2 in respect of such Goods.

13.8. Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the period of the warranty in Condition 13.2.

14. PROVISION OF SERVICES

In the provision of Services:

- 9.1. under no circumstances shall the Company be, or become, liable for pre-existing defects at the Buyer's Premises or of the Buyer's property;
- 9.2. the Company shall endeavour to remove from site all waste materials arising during the course of installation, and the Buyer acknowledges and agrees that the said waste materials cannot be retrieved thereafter. If the Buyer requires that any waste materials be retained this must be clearly stated in the written acknowledgement of order, in which case the Company will endeavour (but cannot guarantee) to ensure that the required waste materials are retained but it shall be the Buyer's responsibility to effect the retention.
- 9.3. In respect of the installation of any Goods and/or the provision of any Services, the Buyer is responsible for:
 - 9.4. obtaining any necessary legal or other permissions prior to the installation of the Goods and/or the provision of the Services;
 - 9.5. where necessary, the prior removal or re-siting of any wires, pipes and cables;
 - 9.6. providing such access to premises and facilities as may be reasonably required by the Company for the purpose of installing the Goods or providing the Services;
 - 9.7. providing such information as may be required by the Company for the purpose of installing the Goods or providing Services, and ensuring that all such information is correct and accurate;
 - 9.8. ensuring that all necessary safety and security precautions are in place at the premises or property where Services are to be performed or Goods are to be installed;
 - 9.9. giving access to all mains services if required for the purpose of fulfilling the order and the Contract and obtaining any required or convenient permissions, including in order that the Company's workmen may gain access to adjoining properties for the purpose of carrying out the Services;
 - 9.10. the cost of any additional work rendered necessary to complete the installation as a result of failure of the Buyer to comply with the above requirements;
 - 9.11. damage to any Goods occasioned by the Buyer or those working for the Buyer; and
 - 9.12. redecoration or repainting after installation of any Goods and/or the provision of any Services.

15. CONTROL SOFTWARE USER LICENCE AGREEMENT

The Buyer is deemed to have accepted the terms and conditions of the End User Licence Agreement for software components configured and delivered as part of a circadian control system. The following terms form the End User Licence Agreement:

1. DEFINITIONS.

- a) "Agreement" means this Software System License Agreement.
- b) "Product" means the executable code version of the Software System, and applications or Plug-ins distributed for use with the Product.
- c) e) "Update" means a revision to the Product designated by a change in the version number to the right of the decimal place.
- f) "Upgrade" means a revision to the Product designated by a change in the version number to the left of the decimal place.

2. LICENSE GRANT. Subject to Licensee's compliance with the terms and conditions of this Agreement, the Company grants Licensee a personal, non-exclusive, and non-transferable license to install and use the Product.

3. RESTRICTIONS ON USE. Licensee may not: (i) modify or create any derivative works of the Product; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to (a) derive the source code, underlying ideas, algorithms, structure or organization of the Product, or (b) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Product (except to the extent applicable laws specifically prohibit such restriction); (iii) attempt to access or use the premium features of the Product if Licensee has not paid the applicable fees or by any manner or method other than using the key provided; (iv) redistribute, encumber, sell, rent, lease, sublicense, or otherwise transfer the Product or rights thereto; (v) use the Product to reproduce, display, perform, or distribute audio and/or video content (including derivatives thereof in any manner that violates any laws or regulations or any third party's rights, including copyright, privacy or publicity rights, or other intellectual property right; (vi) use the Product in a timesharing or service bureau arrangement; or (vii) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Product.

4. UPGRADES AND UPDATES. This license does not entitle Licensee to Updates or Upgrades to the Product. In order to receive an Update or Upgrade to the Product, Licensee must agree to the terms in existence for the Update or Upgrade at the time of the release of the Update or Upgrade.

5. LICENSEE REPRESENTATIONS. Licensee represents and warrants that it has the legal capacity to enter into this Agreement, that it will use the Product only for lawful purposes and in accordance with this Agreement, and that it will not use the Product to violate any law, regulation or ordinance or any right of the Company or its licensors or any third party, including without limitation, any right of privacy, publicity, copyright, trademark, or patent. Licensee further represents and warrants that Licensee has adequate legal capacity to enter into binding agreements such as this Agreement.

6. TERMINATION. Should Licensee breach this Agreement, Licensee's right to use the Product shall terminate immediately and without notice. The respective rights and obligations of the Company and Licensee under the provisions of Sections 3 ("Restrictions on Use"), 6 ("Termination"), 7 ("Proprietary Rights"), 9 ("Limitation of Liability"), and 12 ("Miscellaneous") shall survive expiration or termination of this Agreement and Licensee agrees to continue to be bound by those terms. Upon termination, Licensee shall destroy all copies of the Product.

7. PROPRIETARY RIGHTS. Title, ownership rights, and intellectual property rights in the Product shall remain in the Company and/or its licensors and other suppliers. Licensee acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with the Company's or its licensors' or other suppliers' ownership of or rights with respect to the Product. The Product is protected by copyright and other intellectual property laws and by international treaties. Title and related rights in the

9. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE COMPANY OR ITS AFFILIATES, DIRECTORS, EMPLOYEES, DISTRIBUTORS, SUPPLIERS, AGENTS OR RESELLERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO LOST PROFITS, LOST DATA, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN ANY CASE, THE COMPANY'S ENTIRE COLLECTIVE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE THE SUM OF THE FEES LICENSEE PAID FOR THIS LICENSE (IF ANY) AND REPLACEMENT OF DEFECTIVE MEDIA OR PROVISION OF A REASONABLY SIMILAR PRODUCT, AS DETERMINED AT THE COMPANY'S SOLE DISCRETION, WITH THE EXCEPTION OF DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF THE COMPANY TO THE EXTENT APPLICABLE LAW PROHIBITS THE LIMITATION OF DAMAGES IN SUCH CASES. ADDITIONALLY, THE COMPANY SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING OUT OF: (i) CONTENT PROVIDED BY LICENSEE OR A THIRD

PARTY THAT IS ACCESSED THROUGH OR USED WITH THE PRODUCT AND/OR ANY MATERIAL LINKED THROUGH SUCH CONTENT; OR (ii) THE USE OF PLUG-INS DEVELOPED BY THIRD PARTIES.

10. EXPORT CONTROLS. Licensee agrees to comply with all export and import laws and restrictions and regulations of any United States or other governmental agency or authority, and not to export, re-export or import the Product or any direct product thereof in violation of any such restrictions, laws or regulations, or without all necessary approvals.

11. INJUNCTIVE RELIEF. Licensee acknowledges and agrees that, notwithstanding any other provisions of this Agreement, any breach or threatened breach of this Agreement by Licensee shall cause the Company irreparable damage for which recovery of money damages would be inadequate and that the Company therefore may obtain timely injunctive relief to protect its rights under this Agreement in addition to any and all other remedies available at law or in equity.

12. MISCELLANEOUS. (a) This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, which may only be modified by a written amendment signed by an authorized executive of the Company. (b) Except to the extent applicable law, if any, provides otherwise, this Agreement shall be governed by the laws of England and Wales, excluding its conflict of law provisions. (c) Licensee expressly agrees that jurisdiction for any claim or dispute relating to or arising out of this Agreement resides exclusively in the courts of London. (d) This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. (e) If any provision in this Agreement should be held illegal or unenforceable, such provision shall be modified to the extent necessary to render it enforceable without losing its intent or severed from this Agreement if no such modification is possible, and other provisions of this Agreement shall remain in full force and effect, or the Company may at its option instead terminate this Agreement. (f) A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. (g) Licensee may not assign or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein. The Company may assign this Agreement to any entity at its sole discretion. (h) This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns. (i) Neither party shall be in default or be liable for any delay, failure in performance (excepting the obligation to pay) or interruption of service resulting directly or indirectly from any cause beyond its reasonable control.

16. CUSTOMER CANCELLATION OF ORDERS

Contracts and orders and parts thereof may be cancelled only by the Company's written acceptance of such cancellation. Where the Company accepts such cancellation, the Company reserves the right to charge the Buyer with the amount of any losses or expenses directly or indirectly resulting from such cancellation. Where the Company does not accept such cancellation, subject to the effect of the other Conditions contained herein, the Company reserves the right to recover the full price from the Buyer and to charge the Buyer with additional losses both direct and indirect resulting from such cancellation. In any case where the Company was required to place a deposit with a manufacturer or supplier in respect of an order, the Company may require the Buyer to reimburse such sum in the event of cancellation.

17. LIMITATION OF LIABILITY

17.1. Subject to Conditions 5, 6, 7, 13, 17, 18 and 21, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-Contractors to the Buyer in respect of:

17.1.1. any breach of these Conditions;

17.1.2. any defect in the Goods and/or the Services;

17.1.3. any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

17.1.4. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

- 17.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 17.3. Nothing in these Conditions excludes or limits the liability of the Company:
- 17.3.1. for death or personal injury caused by the Company's negligence;
 - 17.3.2. under section 2(3) of the Consumer Protection Act 1987;
 - 17.3.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - 17.3.4. for fraud or fraudulent misrepresentation.
- 17.4. Subject to Condition 15.2 and Condition 15.3:
- 17.4.1. the Company's total liability in contract, tort (including without limitation negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - 17.4.2. the Company shall not be liable to the Buyer for any pure economic loss, loss of profits, loss of business, loss of contracts, damage to property, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

NOTICE TO CONSUMERS: THESE TERMS AND CONDITIONS DO NOT AFFECT YOUR STATUTORY RIGHTS.

18. FORCE MAJEURE

- 18.1. The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods and/or the Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- 18.1.1. act of God, explosion, flood, tempest, fire or accident;
 - 18.1.2. war or threat of war, national emergency, sabotage, terrorism, insurrection, protest, riot, epidemic, civil disturbance or requisition;
 - 18.1.3. Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 18.1.4. import or export regulations or embargoes;
 - 18.1.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
 - 18.1.6. restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials; and
 - 18.1.7. power failure or breakdown in machinery.

19. INSOLVENCY

The Company shall have the right to terminate the Contract forthwith in any of the circumstances outlined in Condition 7.6 in any of which cases the Company shall have no further obligation hereunder and the price for all Goods delivered and Services performed and to be performed shall become immediately due and payable.

20. ASSIGNMENT

- 20.1. The Company may assign the Contract or any part of it to any person, firm or company.
- 20.2. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

21. WAIVER

- 21.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 21.2. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 21.3. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

22. SEVERANCE

- 22.1. If any provision of the Contract (or part of a provision) is found by any Court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 22.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

23. THIRD PARTY RIGHTS

No term of any Contract formed between the Buyer and the Company shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

24. COMMUNICATIONS

- 24.1. All communications between the Buyer and the Company about or in connection with the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:
 - 24.1.1. (in case of communications to the Company) to its main place of business or such changed address as shall be notified to the Buyer by the Company; or
 - 24.1.2. (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified in writing to the Company by the Buyer.
- 24.2. Communications shall be deemed to have been received:
 - 24.2.1. if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - 24.2.2. if delivered by hand, on the day of delivery; or
 - 24.2.3. if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

25. APPLICABLE LAW

- 25.1. These Conditions and/or the Contract and any disputes or claims arising out of or in connection with their subject matter are governed by and construed in accordance with the law of England.
- 25.2. The Buyer and the Company irrevocably agree that the Courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions and/or the Contract.