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## Valeport Limited – Terms & Conditions of Sale of Goods & Services

### 1. Definitions and Interpretation

1.1. In these Conditions, the following definitions apply:

<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>Buyer</b>	the person who submits an Order to the Supplier.
<b>Conditions</b>	the terms and conditions set out in this document, as may be amended from time to time in accordance with clause 13.8.
<b>Contract</b>	an individual legally binding contract between the Supplier and the Buyer for the sale by the Supplier and the purchase by the Buyer of the Goods and/or Services in accordance with these Conditions.
<b>Delivery</b>	has the meaning set out in clause 4.3.
<b>Delivery Address</b>	the address to which the Goods are to be delivered, stated on the Order Confirmation.
<b>Due Date</b>	has the meaning set out in clause 6.6.
<b>Force Majeure Event</b>	has the meaning set out in clause 11.
<b>Goods</b>	the goods (or, where relevant, any part of them) set out in the Order Confirmation.
<b>Location</b>	means the address for performance of the Services being 20 St Peters Quay, Totnes, TQ9 5EW.
<b>Order</b>	the Buyer's order for Goods and/or Services (for example, as set out in an email, or in the Buyer's purchase order form or the Buyer's written acceptance of the Supplier's quotation).
<b>Order Confirmation</b>	has the meaning set out in clause 2.5.
<b>Services</b>	means the services set out in the Order and to be supplied by Valeport to the Buyer.
<b>Specification</b>	the specification for the Goods and/or Services (if any) that are agreed in writing by the Buyer and the Supplier before the Contract is formed.
<b>Supplier</b>	Valeport Limited (registered in England and Wales with company number 01950444 and whose registered address is 20 St Peters Quay, Totnes, TQ9 5EW and whose VAT number is GB165875367.

- 1.2. In these Conditions, the following rules of interpretation apply:
- 1.2.1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  - 1.2.2. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
  - 1.2.3. Words in the singular include the plural and vice versa.
  - 1.2.4. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
  - 1.2.5. Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
  - 1.2.6. A reference to **writing** or **written** includes faxes and e-mails.
  - 1.2.7. A reference to this Contract includes its schedules.
  - 1.2.8. In the event of any conflict or inconsistency between different parts of this Contract, the following descending order of priority applies:
    - 1.2.8.1. the terms and conditions in the main body of this Contract;
    - 1.2.8.2. the Schedules.

## 2. Basis of Contract

- 2.1. Any estimate or quotation given by the Supplier to the Buyer constitutes an invitation to the Buyer to make an offer to purchase the goods and/or services listed on that quotation, subject to these Conditions. Any such estimate or quotation is not a binding offer and is not capable of acceptance. Unless the Supplier has confirmed otherwise in writing, any estimate or quotation shall only be valid for a period of 60 Business Days from its date of issue. All prices shown on the Supplier's estimate or quotation are in GBP pounds sterling unless otherwise stated in writing.
- 2.2. These Conditions apply to all contracts between the Supplier and the Buyer for the supply and sale by the Supplier to the Buyer of any goods and/or services, to the exclusion of any other terms or conditions that the Buyer seeks to impose or incorporate orally, via conduct under any purchase order, confirmation of order, specification or other document, or which are implied by trade, custom, practice or course of dealing. Accordingly, 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 any contract between the Supplier and the Buyer for the supply and sale by the Supplier to the Buyer of any goods and/or services.
- 2.3. An Order constitutes an offer by the Buyer to purchase the Goods and/or Services from the Supplier in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Buyer are complete and accurate. The Buyer shall ensure that the Supplier is given any necessary information relating to the Goods and/or Services within a sufficient time to enable the Supplier to perform the Contract in accordance with these Conditions.

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- 2.4. All Orders must be sent by email to [sales@valeport.co.uk](mailto:sales@valeport.co.uk) (or such other email address as may be specified by the Supplier from time to time) and must specify:
- 2.4.1. the type (i.e. product name, product size and quantity) of product ordered and/or any services to be provided;
  - 2.4.2. the Buyer's name, address and a contact email address;
  - 2.4.3. the date(s) the Buyer would like Delivery to take place (but which is not legally binding on the Supplier) if purchasing Goods;
  - 2.4.4. the approximate date(s) that the Buyer would like the Services to be carried out if applicable (but which is not legally binding on the Supplier).
- 2.5. An Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order (which it shall issue via email to the email address specified in the Order) ("**Order Confirmation**"), upon departure of the Order for Goods from the Supplier's premises to the Delivery Address, or upon performing the Services at which point the Contract shall come into existence and the Buyer is deemed to accept these Conditions. In the event that there is a contradiction between the terms of the Order Confirmation and the terms of these Conditions, the terms of the Order Confirmation shall prevail.
- 2.6. If the Supplier is unable or unwilling to supply the Buyer with any Goods and/or Services included in an Order, the Supplier shall inform the Buyer by email and the Order shall not be processed in respect of those Goods and/or Services. If the Buyer has already paid for those Goods and/or Services, the Supplier shall refund the full amount for those Goods and/or Services as soon as reasonably practicable.

### **3. Goods**

- 3.1. Any samples, drawings, descriptive matter, or advertising relating to the Goods and/or Services produced or supplied by the Supplier and any descriptions or illustrations of the Goods contained in the Supplier's catalogues, websites or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them and are for illustrative purposes only. They shall not form part of the Contract or have any contractual force. Goods supplied may vary from those samples, drawings, descriptive matter, advertising, descriptions and/or illustrations.
- 3.2. The Supplier reserves the right to amend the Specification of the Goods and/or Services if required by any applicable legal (including statutory or regulatory) requirements.

### **4. Delivery**

- 4.1. The Services shall be performed by the Supplier at the Location. The Buyer shall be responsible for the delivery of the Goods to the Location prior to the date specified in the Order including any costs of such delivery. Once the Services have been completed, Delivery (defined below) shall be as set out in this clause 4 unless otherwise previously agreed in writing.

- 4.2. Unless the parties have agreed otherwise in writing, the Goods shall be delivered:
- 4.2.1. for Orders from Buyers in the UK, FCA (Incoterms 2010), at the Supplier's factory address, which shall be specified on the Order Confirmation; or
  - 4.2.2. for orders from Buyers outside the UK, FCA (Incoterms 2010), 20 St Peters Quay, Totnes, TQ9 5EW.
- 4.3. Delivery shall be complete when the Supplier has completed loading of the Goods onto the Buyer's/its agent's collection vehicle ("**Delivery**").
- 4.4. The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Buyer and Supplier reference numbers, the type (e.g. the product name) and quantity of the Goods (including the code number of the Goods, where applicable) and special storage instructions in respect of the Goods (if any).
- 4.5. Any dates requested by the Buyer or quoted by the Supplier for delivery are approximate only, the time for delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Supplier with adequate delivery instructions or any other instructions or information that is relevant to the supply of the Goods.
- 4.6. If the Supplier fails to deliver all of the Goods or perform the Services within a reasonable time, to the fullest extent permitted by law, its liability shall be limited to (and the Buyer's sole remedy shall be) a reimbursement of the costs and reasonable out of pocket expenses incurred by the Buyer in obtaining replacement goods of similar description, function and quality in the cheapest market available, less the price of the Goods that are missing. The Supplier shall have no liability for any non-delivery to the extent that such non-delivery is caused by a Force Majeure Event or the Buyer's failure to deliver the Goods to the Location for the Services, provide the Supplier with adequate delivery instructions or any other instructions or information that is relevant to the supply of the Goods.
- 4.7. If the Buyer fails to take Delivery of the Goods or fails to give the Supplier adequate delivery instructions (or otherwise than by reason of a Force Majeure Event or as a result of an act or omission of the Supplier) then, without prejudice to any other right or remedy available to it, Delivery shall be deemed to have taken place and the Supplier may:
- 4.7.1. store the Goods at its premises until actual Delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 4.7.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable delivery, storage, selling and/or administrative expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 4.8. The Supplier may deliver the Goods in instalments. Where the Goods are to be delivered in instalments, the Supplier's failure to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more of the instalments shall not entitle the Buyer to terminate the whole Contract and/or to treat the Contract as a whole as repudiated.

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## 5. Title and risk

- 5.1. Unless the parties have agreed otherwise in writing, the risk in the Goods shall pass to the Buyer on Delivery.
- 5.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title to the Goods shall not pass to the Buyer until (whichever is the sooner of):
  - 5.2.1. the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums;
  - 5.2.2. the Buyer resells the Goods to a purchaser at arm's length in the normal course of its business, in which case title to the Goods shall pass to the Buyer immediately before the time at which resale by the Buyer occurs;
  - 5.2.3. the Buyer uses the Goods in the normal course of its business, in which case title to the Goods shall pass to the Buyer immediately before the time at which such use by the Buyer occurs;
  - 5.2.4. the issue of legal proceedings by the Supplier against the Buyer for recovery of payment for the Goods in question, in which case title shall pass to the Buyer immediately before such proceedings are issued.
- 5.3. Until title to the Goods has passed to the Buyer, the Buyer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall:
  - 5.3.1. store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Supplier's property;
  - 5.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.3.3. keep the Goods free from any lien, charge or encumbrance;
  - 5.3.4. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;
  - 5.3.5. notify the Supplier immediately if it becomes subject to any of the events listed in clauses 9.2.4 - 9.2.11 (inclusive); and
  - 5.3.6. give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 5.4. If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clauses 9.2.4 - 9.2.11 (inclusive), then, without limiting any other right or remedy the Supplier may have, the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately.
- 5.5. The Supplier may at any time before title to the Goods passes to the Buyer:
  - 5.5.1. require the Buyer to deliver up all Goods in its possession which have not been used, resold, or irrevocably incorporated into another product; and
  - 5.5.2. if the Buyer fails to do so promptly, enter any premises (including locked and steadfast premises) of the Buyer or of any third party where the Goods are stored in order to recover them.

## 6. Price and payment

- 6.1. Subject to clause 6.2, the prices to be paid by the Buyer to the Supplier for the Goods and/or Services are the prices set out in the Order Confirmation.
- 6.2. The Supplier may, by giving notice to the Buyer at any time up to 5 Business Days before the date scheduled for Delivery, increase the price of the Goods and/or Services to reflect any increase in the cost of the Goods and/or Services that is due to:
  - 6.2.1. foreign exchange fluctuations, increases in applicable taxes and duties, or increases in acquisition costs and/or labour and materials costs;
  - 6.2.2. any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification of the Goods and/or Services; or
  - 6.2.3. any delay caused by any instructions of the Buyer, delivery to the Location by the Buyer, or failure of the Buyer to give the Supplier adequate or accurate information or instructions.
- 6.3. The price of the Goods and Services is inclusive of amounts in respect of value added tax (VAT), where the Goods and/or Services are ordered by Buyers incorporated in the UK. The price of Goods and Services is exclusive of VAT where the Goods and/or Services are ordered by Buyers incorporated outside the UK.
- 6.4. The price of the Goods is inclusive of the Supplier's standard commercial packaging costs. The Supplier reserves the right to charge the Buyer for any additional packaging costs incurred by the Supplier in providing additional packaging of the Goods, if the same is requested by the Buyer.
- 6.5. The Supplier may invoice the Buyer for the Goods and/or Services on or at any time after Delivery.
- 6.6. The Buyer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice ("**Due Date**"). Payment shall be made to the bank account nominated in writing by the Supplier from time to time. Time of payment is of the essence. If the Buyer fails to make any payment due to the Supplier under the Contract by the Due Date, then the Buyer shall pay interest on the overdue amount at the rate of 8% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 6.7. The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Supplier to the Buyer.

## 7. Warranty for the Goods

The Goods and Services are subject to the Supplier's standard product warranty, as outlined at Schedule 1 of this Contract. A copy of the Supplier's standard product warranty will also be enclosed with the Goods on Delivery.

## **8. Intellectual Property Rights**

- 8.1. The intellectual property rights in samples, drawings, descriptive matter, instruction manuals, advertising, descriptions and/or illustrations published and/or provided to the Buyer by the Supplier is owned by the Supplier and/or its licensors. Such materials may not be reproduced or used (in whole or in part) without the Supplier's prior written consent (which it may withhold at its absolute discretion).
- 8.2. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 8.2 shall survive termination of the Contract.
- 8.3. The Supplier retains all right, title and interest in any tooling, fixtures, equipment, tools and/or designs that are produced and/or used by the Supplier in connection with the fulfilment of the Buyer's Order. The Buyer acknowledges that neither in entering into a Contract, nor performing under has it (nor anyone acting on its behalf) acquired (and shall not acquire) any interest in any copyright, patent, product licence, trade mark, design or any other intellectual property right of any kind or nature which may exist or come to exist in connection with the Contract.

## **9. Termination and suspension**

- 9.1. If the Buyer becomes subject to any of the events listed in clause 9.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Buyer.
- 9.2. For the purposes of clause 9.1, the relevant events are:
  - 9.2.1. the Buyer fails to pay any amount due under any Contract on the Due Date for payment and remains in default not less than 5 days after being notified to make such payment;
  - 9.2.2. the Buyer commits a material breach of any terms of any Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 5 days after being notified to do so;
  - 9.2.3. the Buyer repeatedly breaches any of the terms of any Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of that Contract;
  - 9.2.4. the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
  - 9.2.5. the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;



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- 9.2.6. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
  - 9.2.7. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
  - 9.2.8. (being a company) the holder of a qualifying floating charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
  - 9.2.9. a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
  - 9.2.10. a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 9.2.11. any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.1 to clause 9.2.10 (inclusive);
  - 9.2.12. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - 9.2.13. the Buyer's financial position deteriorates to such an extent that in the Supplier's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 9.3. Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods and/or Services under the Contract or any other Contract between the Buyer and the Supplier if the Buyer becomes subject to any of the events listed in clause 9.2.1 to clause 9.2.11, or the Supplier reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under any Contract on the Due Date.
- 9.4. On termination of the Contract for any reason the Buyer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and any interest due for late payment.
- 9.5. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 9.6. Upon termination of the Contract, this clause and the following clauses shall continue in full force and effect: clause 1 (Definitions and Interpretation); clause 7 (Intellectual Property Rights); clause 10 (Limitation of Liability); clause 12 (Indemnity); and clause 13 (General).



## 10. Limitation of liability

- 10.1. This clause 10 sets out the liability of each party (including any liability for the acts or omissions of its employees, agents, consultants and sub-contractors) to the other party in respect of:
- 10.1.1. any breach of any Contract, howsoever arising;
  - 10.1.2. the Goods, or any part thereof (including any use made of them);
  - 10.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with any Contract;
  - 10.1.4. any other liability (including non-contractual) howsoever arising under any legal theory whatsoever arising out of or in connection with any Contract.
- 10.2. Nothing in these Conditions limits or excludes the liability for either party for:
- 10.2.1. death or personal injury caused by negligence;
  - 10.2.2. fraud or fraudulent misrepresentation;
  - 10.2.3. any liability under the indemnities at clauses 8.2 and/or 12; or
  - 10.2.4. any other matter for which it would be unlawful for a party to exclude or limit or attempt to exclude or limit its liability.
- 10.3. Subject to clause 10.2 and clause 12, neither party shall under any circumstances whatsoever be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution and/or otherwise howsoever under any legal theory whatsoever, for any of the following losses (whether direct or indirect):
- 10.3.1. loss of profits or revenue (save for the price to be paid for any Goods and/or pursuant to clause 6.6);
  - 10.3.2. loss of business;
  - 10.3.3. depletion of goodwill and/or loss of reputation;
  - 10.3.4. loss of other contracts or loss of business opportunity;
  - 10.3.5. loss or corruption of data or information;
  - 10.3.6. payments (e.g. penalties) due to be paid/paid to any third party under any other contract or arrangement;
  - 10.3.7. wasted management and/or staff and/or office time;
  - 10.3.8. loss of anticipated savings,
- nor any other special, indirect or consequential loss, costs, damages, charges or expenses suffered by the other party that arises under or in connection with any Contract.
- 10.4. Subject to clause 10.2 and clause 12, each party's total liability to the other party whether in contract, tort (including negligence), breach of statutory duty misrepresentation, restitution and/or otherwise howsoever arising under any legal theory whatsoever shall in all circumstances be limited to and shall not exceed:
- 10.4.1. for non-payment of any amounts due under this agreement, to the amount of the debt due (plus any interest due thereon for late payment plus all costs (including legal costs) incurred in recovering such sums);
  - 10.4.2. for any other type of liability, the lower of a total sum equal to £500,000 (five hundred thousand pounds sterling) or 150% of the value of the Contract.

## 11. Force majeure

- 11.1. A "**Force Majeure Event**" means any event beyond a party's reasonable control, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources or transport network or utility service, any law or any action taken by a government or public authority, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 11.2. If a party is prevented, hindered or delayed in or from performing any of its obligations under a Contract by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of that Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than ninety (90) days, the party not affected by the Force Majeure Event may terminate the Contract by giving one (1) week's written notice to the Affected Party.

## 12. Indemnity

- 12.1. The Buyer agrees to indemnify the Supplier against any claims, losses, damages, costs or expenses (including professional fees) which the Supplier incurs or which arises as a result of:
- 12.1.1. the negligence or misconduct of the Buyer or its directors, employees, agents, servants, successors and/or assigns;
  - 12.1.2. any breach of the Buyer's contractual obligations;
  - 12.1.3. any violation by the Buyer (or its directors, employees, agents, servants, successors and/or assigns) of any laws, statutes and/or regulations applicable to the Buyer's activities;
  - 12.1.4. any matter relating to the Buyer's use or its directors', employees', agents', servants', successors' and/or assigns' use of the Goods;

save for where such claims, losses, damages, costs or expenses arise or are incurred as a result of the Supplier's negligence or breach of contract.

## 13. General

### 13.1. Assignment and other dealings.

- 13.1.1. The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.1.2. The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

- 13.2. **Notices.** Any notice given pursuant to this agreement shall be in writing and shall be delivered by email to the relevant party using the email address that the relevant party last used when emailing the other party, or any other email address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time the email was sent, provided that the party sending the email can produce evidence that the email was correctly addressed and that it left its servers. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.3. **Severance.**
- 13.3.1. If any court or competent authority finds that any provision of a Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 13.3.2. If any invalid, unenforceable or illegal provision of a Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 13.4. **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.5. **No Partnership or Agency.** Except as expressly provided, nothing in these Conditions are intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, nor authorise a party to make or enter into any commitments for or on behalf of the other party.
- 13.6. **Third party rights.** Subject to clause 10, a person who is not a party to the Contract shall not have any rights to enforce its terms.
- 13.7. **Entire Agreement.**
- 13.7.1. These Conditions (and any document referred to in them) constitute the entire terms and conditions between the parties in respect of any Contract and supersede all previous agreements between the parties relating to the subject matter of any Contract.
- 13.7.2. Each party acknowledges that, in entering into a Contract (and any document referred to in it), it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in these Conditions or Order Confirmation. Each party agrees that its only liability in respect of those representations and warranties that are set out in these Conditions or Order Confirmation (whether made innocently or negligently) shall be for breach of contract. Nothing in this clause shall limit or exclude any liability for fraud.

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- 13.8. **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
- 13.9. **Governing law.** The Contract, 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.
- 13.10. **Arbitration.** The parties irrevocably agree that all disputes or claims arising out of or in connection with this Contract or with its subject matter or formation (including non-contractual disputes or claims) shall be finally resolved by arbitration in accordance with the Arbitration Act 1996 and where possible, under the rules of the Institute of Mechanical Engineers at the date of the dispute or claim. It is agreed that:
- 13.10.1. the tribunal shall consist of one arbitrator;
  - 13.10.2. in default of the parties' agreement as to the arbitrator, the appointing authority shall be the Institute of Mechanical Engineers;
  - 13.10.3. the language used in the arbitration shall be English;
  - 13.10.4. the seat of the arbitration shall be London, England.

## SCHEDULE 1 – WARRANTY

Where the Buyer has purchased Goods under the Contract, the Goods are supplied with a limited 3 year warranty against material defects in materials and workmanship, valid from the date of despatch from the Supplier's premises

Where the Buyer has bought Services under the Contract, the serviced Goods shall have a limited 12 month warranty against defects in materials and workmanship, valid from the date of despatch from the Supplier's premises (both the "**Warranty**" as applicable)

The Warranty is subject to the following exclusions, exceptions and limitations:

- 1) Sensors supplied by other manufacturers (including pressure sensors) are not covered by the Supplier and are only warranted according to the warranty provided by the original manufacturer (typically 1 year).
  - 2) Consumable items (including, but not limited to: batteries, o-rings, zinc anodes and electrolytes) are not covered by the Warranty.
  - 3) Reasonable wear and tear (as judged by the Supplier) is not covered by the Warranty.
  - 4) Subject to clause 10.3 of the Contract the Supplier shall be under no liability for any consequential loss or damage of any kind whatsoever.
  - 5) Failures caused by improper care and handling, or by unskilled or poor quality maintenance attempts are not covered under the Warranty.
  - 6) Modifications to the original design will invalidate the Warranty, insofar as it relates to the modified part or any knock-on effects of the modification.
  - 7) All repairs to the Goods must be performed by the Supplier's personnel or their authorised representatives.
  - 8) The Supplier is the sole judge of the cause of any failure, and the validity of any Warranty claim. Please refer to "Our Approach" section below.
- In the event of a Warranty claim, please contact the Supplier for an RMA Returns Number prior to shipping the Goods. Failure to do so may result in a delay in the processing of your Warranty claim.
  - Goods for Warranty assessment should be adequately packed (preferably in the original packing) and returned freight pre-paid to the Supplier, complete with a description of the nature of the problem. All Warranty claims are assessed on a case-by-case basis. You will be informed as soon as possible as to the validity of the Warranty claim.
  - In the event of a valid Warranty claim, the Goods will be repaired or replaced as appropriate at the sole discretion of the Supplier. The repaired / replacement Goods will be returned to you at our cost, using our choice of shipping method.
  - In the event of an invalid Warranty claim, you will be informed of any repairs that are necessary, and if acceptable, the Goods will be repaired as if it had been returned for service, with appropriate costs and return freight charges payable by you.
  - Any repairs made under Warranty shall have no effect on the duration of the Warranty period, i.e. the Warranty shall continue as if no fault had occurred.
  - The Supplier may, at its sole discretion, opt to despatch a replacement part for fitting in the field, if it is deemed to be the most appropriate response. In such circumstances, the Buyer will be required to return the faulty part to the Supplier (at the Buyer's cost) for assessment and confirmation that the failure is a valid Warranty claim. Failure to return the faulty part, or if the fault is subsequently judged to fall outside the terms of the Warranty, shall result in the Buyer being invoiced for the replacement part and freight costs.

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## **Our Approach**

We hope that our customers accept this Warranty in the spirit in which it is given and to respect that whilst our primary concern is always to try and ensure that any issues are resolved as quickly and as satisfactorily as reasonably possible, we do also have a responsibility to assess the validity of any Warranty claim in our sole discretion, and to consider the Supplier's interests in any actions taken. We have built a reputation on reliability, longevity and quality, and therefore the aim of this Warranty is your satisfaction and peace of mind. The "rules" as detailed above are the framework within which we operate our Warranty policy, and are what you can expect from us in resolving any Warranty issue. However, each case is considered on its own merit, and we may decide that in certain circumstances (in our sole discretion), alternative arrangements or solutions to a Warranty issue are appropriate.