

# Terms & Conditions of Sale

## Goods & Services

Release: 07/04/2022



### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

<b>Business Day</b>	a day other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with clause 18.8.
<b>Contract</b>	the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
<b>Control</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
<b>Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:</b>	as defined in the Data Protection Legislation.
<b>Customer</b>	the person or firm who purchases the Goods and/or Services from the Supplier.
<b>Data Protection Legislation</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
<b>Delivery Location</b>	has the meaning given in clause 4.4.
<b>Force Majeure Event</b>	has the meaning given to it in clause 17
<b>Goods</b>	the goods (or any part of them) set out in the Order, including the Software.
<b>Group Company</b>	In relation to a company means that company, its subsidiaries or holding companies from time to time and any subsidiary of any holding company from time to time.
<b>INCOTERMS</b>	means the Incoterms 2020 - international trade terms published by the International Chamber of Commerce (ICC)

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<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up, 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, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>Order</b>	the Customer's order for the supply of Goods and/or Services, as set out the Customer's written acceptance of the Supplier's Quotation
<b>Quotation</b>	the quotation for the Goods and Services provided by the Supplier.
<b>Services</b>	the services, (including where applicable) the installation of the Goods at the Customer's premises), supplied by the Supplier to the Customer as set out in the Technical Specification.
<b>Software</b>	means any software provided by the Supplier to the Customer in relation to its usage of the Goods.
<b>Supplier</b>	TORUS MEASUREMENT SYSTEMS LIMITED registered in England and Wales with company number 03761292.
<b>Technical Specification</b>	any specification for the Goods and Services, including any relevant plans or drawings, that is agreed by the Customer and the Supplier.
<b>UK Data Protection Legislation</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

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### 1.2 Interpretation:

- 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 party includes its personal representatives, successors and permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.2.4 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.
- 1.2.5 A reference to **writing** or **written** includes fax and email.

## 2. Basis of Contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point, and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations, or descriptions of the Services contained in the Supplier's catalogues or brochures, or website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing.
- 2.5 Any Quotation given by the Supplier shall not constitute an offer and is only valid for a maximum period of 60 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

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### 3. Goods

- 3.1 The Goods are described in the Technical Specification.
- 3.2 The Supplier reserves the right to amend the Technical Specification and the Supplier shall notify the Customer in writing as soon as practicable in any such event. If the Customer does not respond to the Supplier in writing within 30 days of the Supplier issuing an amended Technical Specification, the Customer shall be deemed to have accepted such amended specification which shall become the Technical Specification applicable under these conditions.
- 3.3 The Customer shall be responsible for ensuring the accuracy of the terms of any Order, including any applicable Technical Specification submitted by the Customer and for giving the Supplier any and all necessary information relating to the Goods within a sufficient time to enable the Supplier to perform its obligations in accordance with these Conditions.
- 3.4 To the extent that the Goods are to be manufactured in accordance with any part of Technical Specification supplied by the Customer, the Customer 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or 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 Customer's Technical Specification. This Clause shall survive termination of the Contract.
- 3.5 The Customer shall ensure it provides any samples required by the Company to perform its obligations under these Conditions when requested. Samples shall be supplied carriage paid and free of any charge to the Supplier and, unless specifically requested by the Customer in writing, are to be disposable after use.

### 4. Delivery of Goods

- 4.1 Each delivery of the Goods shall be accompanied by a delivery note which shows the date of the order and the date of despatch, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods.
- 4.2 Save as agreed otherwise by the Supplier in writing, delivery shall in all cases be Ex Works Loaded, Telford UK (EXW Loaded– INCOTERMS 2020).
- 4.3 The Supplier will ensure that it prepares the Goods for the Customer, suitably packed, ready for collection and loading by the Customer (or their carrier).
- 4.4 The Customer shall collect the Goods from the Supplier's premises, the premises of its storage and packaging provider or such other location as may be agreed in writing with the Customer before collection (Collection Location) within 10 Business Days of the Supplier notifying the Customer that the Goods are ready, unless otherwise agreed in writing.
- 4.5 Delivery of the Goods shall be completed on the Supplier making the Goods available for collection at the Collection Location. The Supplier is not responsible for the loading or unloading of the Goods.

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4.6 Any dates quoted for delivery of the Goods are approximate only, and the time of 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 Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.7 The Supplier shall ensure that the Goods are insured until such time as delivery has taken place.

4.8 If the Customer fails to collect the Goods within 10 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

4.8.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the next Business Day following the day on which the Customer failed to collect the Goods; and

4.8.2 the Supplier shall store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance).

4.9 Save as agreed by the Supplier in writing, the Supplier is not responsible for export or import clearances.

## 5. Title and Risk

5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

5.2 Title to the Goods shall not pass to the Customer until the earlier 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 Customer 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; and

5.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 5.4.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

5.3.1 store the Goods separately from all other Goods held by the Customer 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 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

5.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.2.2; and

5.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.

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5.4 Subject to clause 5.4.2, the Customer may use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

5.4.1 it does so as principal and not as the Supplier's agent; and

5.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

5.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.2, then, without limiting any other right or remedy the Supplier may have:

5.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

5.5.2 the Supplier may at any time:

5.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

5.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 6. Quality of Goods

6.1 Save as agreed otherwise by the Supplier in writing, the Supplier warrants that on delivery, the Goods shall:

6.1.1 conform in all material respects with the Technical Specification; and

6.1.2 be free from material defects in design, material, and workmanship.

6.2 Unless otherwise agreed in writing Goods installed by the Supplier are further warranted for a period of 12 months from the date of installation, providing the Goods have been used strictly in accordance with the Technical Specification, Quotation or any other information provided by the Supplier.

6.3 The warranty referred to in clause 6.2 will include provision of replacement parts as required plus provision of labour, however, all associated travelling expenses will be charged at cost.

6.4 Subject to clause **Error! Reference source not found.**, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

6.4.1 the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranties set out in clauses 6.1 and 6.2;

6.4.2 the Supplier is given a reasonable opportunity of examining such Goods (and the Customer shall be responsible for the Supplier's reasonable travel costs in doing so); and

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- 6.4.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.
- 6.5 The Supplier shall not be liable for the Goods' failure to comply with the warranties set out in clauses 6.1 or 6.2 if:
  - 6.5.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.4.1.
  - 6.5.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - 6.5.3 the defect arises as a result of the Supplier following any drawing, design or Technical Specification supplied by the Customer;
  - 6.5.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
  - 6.5.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;  
or
  - 6.5.6 the Goods differ from the Technical Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 6.6 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties set out in clauses 6.1 and 6.2.
- 6.7 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

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### 7. Software

7.1 Any Software supplied by the Supplier alongside the Goods shall be licenced to the Customer in accordance with this clause.

7.2 The Customer is licenced to:

7.2.1 install and use the Software in relation to the use of the Goods only:

7.2.1.1 on one central processing unit (CPU) and by one user at a time;

7.2.1.2 provided it is used at any one time on only one computer owned or leased by the Customer, the Customer may transfer the Software from one computer to another;

7.2.1.3 make up to one copy of the Software for back-up purposes;

7.2.1.4 receive and use any free supplementary software code or update of the Software incorporating "patches" and corrections of errors as may be provided by the Supplier from time to time;

7.2.1.5 use any documentation in support of the use of the Software and make up to one copy of the documentation as is reasonably necessary for its lawful use.

7.3 Except as expressly set out in these Conditions or agreed with the Supplier, the Customer undertakes:

7.3.1 not to copy the Software or associated documentation, except where it is necessary for the purpose of back-up or operational security;

7.3.2 not to rent, lease, sub-license, loan, translate, merge, adapt, vary, alter or modify, the whole or any part of the Software or documentation nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;

7.3.3 not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Software;

7.3.4 to not create any software that is substantially similar in its expression to the Software;

7.3.5 to keep any copy of the Software secure and to maintain accurate and up-to-date records of the number and locations of any copy of the Software;

7.3.6 to include any Supplier copyright notice on all entire and partial copies of the Software in any form;

7.3.7 not to provide, or otherwise make available, the Software in any form, in whole or in part to any person without prior written consent from the Supplier;

7.3.8 to comply with all applicable technology control or export laws and regulations.



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### 8. Supply of Services

- 8.1 The Supplier shall supply the Services to the Customer in accordance the Technical Specification and/or the Quotation in all material respects.
- 8.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Technical Specification and/or the Quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Supplier reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 8.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

### 9. Customer's Obligations

- 9.1 The Customer shall:
  - 9.1.1 comply with any additional obligations as set out in the Technical Specification and/or the Quotation;
  - 9.1.2 ensure that the terms of the Quotation, the Order and any information it provides in the Technical Specification are complete and accurate;
  - 9.1.3 co-operate with the Supplier in all matters relating to the Services;
  - 9.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 9.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 9.1.6 comply with all applicable laws, including health and safety laws;
  - 9.1.7 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
  - 9.1.8 prepare the Customer's premises for the supply of the Services;
  - 9.1.9 undertake all heavy lifting and provide heavy lifting facilities to the Supplier's personnel at all times and at short notice.

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9.1.10 keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

9.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

9.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

9.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and

9.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9.3 Following installation of the Goods, any ongoing services from the Supplier to Customer are to be separately contained in a Service Level Agreement agreed between the parties.

## 10. Charges and Payment

10.1 The price for Goods and Services:

10.1.1 shall be the price set out in the Quotation; and

10.1.2 shall be inclusive of all costs and charges of packaging and insurance up to the point of delivery.

10.2 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence, and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

10.3 The Supplier reserves the right to:

10.3.1 increase the price of the Goods and Services, by giving notice to the Customer at any time before delivery of the Goods or provision of the Services, to reflect any increase in the cost to the Supplier that is due to:

10.3.1.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

10.3.1.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, Services required, or the Technical Specification; or

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- 10.3.1.3 any delay caused by any instructions of the Customer in respect of the Goods and Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 10.4 The Supplier shall invoice the Customer on or at any time after it accepts the Order. Save as agreed by the Supplier in writing, the Supplier shall issue invoices at the following junctures:
  - 10.4.1 30% of the total price for the Goods and Services shall be invoiced upon confirmation of the Order in accordance with clause 2.2;
  - 10.4.2 60% of the total price for the Goods and Services shall be invoiced upon the Supplier notifying the Customer that the Goods are ready for collection in accordance with clause 4.3;
  - 10.4.3 10% of the total price for the Goods and Services shall be invoiced upon the Supplier performing the Services.
- 10.5 Save as agreed by the Supplier in writing, the Customer shall pay each invoice submitted by the Supplier:
  - 10.5.1 within 30 days of the date of the invoice; and
  - 10.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 10.6 Time for payment shall be of the essence of the Contract.
- 10.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 10.8 The Supplier reserves the right to require that the price of any Goods sold pursuant to this agreement be secured by an irrevocable letter of credit satisfactory to the Supplier, established by the Customer in favour of the Supplier before the Order is accepted and confirmed by a bank located in London, England acceptable to the Supplier (confirming bank). The letter of credit shall be for the price payable for the Goods (together with any tax or duty payable) to the Supplier and shall be valid for 3 months after the date of delivery.
- 10.9 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 15 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.9 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 10.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

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### 11. Intellectual property rights

11.1 All Intellectual Property Rights in or arising out of or in connection with the Goods or Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

11.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

### 12. Data Protection

12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 12, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

12.2 We will only use your personal information as set out in our Privacy policy, which can be found by following the attached link: [Privacy Policy | Torus Group \(torus-group.com\)](https://www.torus-group.com/privacy-policy)

### 13. Confidentiality

13.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients, or suppliers of the other party, except as permitted by clause 13.2.

13.2 Each party may disclose the other party's confidential information:

13.2.1 to its employees, officers, representatives, subcontractors, or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors, or advisers to whom it discloses the other party's confidential information comply with this clause; and

13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

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### 14. Limitation of Liability

- 14.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000.00 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange, and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 14.2 The restrictions on liability in this clause 14 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default including any removal of obscuring of any identification marks, labels, safety instructions or warnings.
- 14.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 14.4.1 death or personal injury caused by negligence;
  - 14.4.2 fraud or fraudulent misrepresentation; and
  - 14.4.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.5 Subject to clause 14.4, the Supplier's total liability to the Customer shall not exceed the total sums paid by the Customer under the Contract in respect of goods and services actually supplied by the Supplier.
- 14.6 This clause 14.6 sets out specific heads of excluded loss:
- 14.6.1 Subject to clause 14.4, the types of loss listed in clause 14.6.2 are wholly excluded by the parties.
  - 14.6.2 The following types of loss are wholly excluded:
    - 14.6.2.1 loss of profits;
    - 14.6.2.2 loss of sales or business;
    - 14.6.2.3 loss of agreements or contracts;
    - 14.6.2.4 loss of anticipated savings;
    - 14.6.2.5 loss of use or corruption of software, data or information;
    - 14.6.2.6 loss of or damage to goodwill; and
    - 14.6.2.7 indirect or consequential loss.

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14.7 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 6 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

14.8 This clause 14 shall survive termination of the Contract.

### 15. Termination

15.1 Without affecting any other right or remedy available to it, the Supplier is entitled to either:

15.1.1 Terminate wholly or in part the Contract or any or every other Contract with the Customer; or;

15.1.2 Suspend any further deliveries under the Contract or any or every such contract, in the following events:

15.1.2.1 If any debt due and payable by the Customer to the Supplier is unpaid;

15.1.2.2 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

15.2.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

15.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

15.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

15.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer (or any member of its Group) and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.2.2 or 15.2.3, or the Supplier reasonably believes that the Customer is about to become subject to any of them or there is a change of control of the Customer.

### 16. Consequences of Termination

16.1 On termination of the Contract:

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16.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

16.1.2 the Customer shall return all of the Supplier Materials or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

16.2 Termination of the Contract shall not affect any rights, remedies, obligations, and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## 17. Force Majeure

17.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a Force Majeure Event) including, without limitation:

17.1.1 acts of God, flood, drought, earthquake or other natural disaster;

17.1.2 epidemic or pandemic;

17.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

17.1.4 nuclear, chemical or biological contamination or sonic boom;

17.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

17.1.6 collapse of buildings, fire, explosion or accident; and

17.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than with companies in the same group as the party relying on this clause);

17.1.8 non-performance by suppliers or subcontractors (other than by companies in the same group as the party relying on this clause); and

17.1.9 interruption or failure of utility service.

17.2 Provided it has complied with clause 17.3, if the Supplier is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event it shall not be in breach of this agreement or otherwise

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liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

17.3 The Supplier shall:

17.3.1 as soon as reasonably practicable after the start of the Force Majeure Event notify the Customer in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

17.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.



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### 18. General

#### 18.1 Assignment and Other Dealings

18.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

18.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

#### 18.2 Notices

18.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

18.2.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

18.2.1.2 by email (to the supplier) [tms.accounts@torus-group.com](mailto:tms.accounts@torus-group.com) or (to the Customer) at the email address notified to the Supplier with the Order.

18.2.2 Any notice shall be deemed to have been received:

18.2.2.1 if delivered by hand, on signature of a delivery receipt;

18.2.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; and

18.2.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 18.2.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

18.2.3 This clause 18.2 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.

18.3 **Severance.** If any provision or part-provision of the Contract 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 such 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 18.3 shall not affect the validity and enforceability of the rest of the Contract.

18.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract 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 the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

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- 18.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 18.6 **Entire Agreement.**
- 18.6.1 The Contract, and the documents referred in it, 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.
- 18.6.2 Each party acknowledges that in entering into the Contract 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 18.6.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 18.7 **Third Party Rights.**
- 18.7.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 18.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 18.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 18.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 18.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.