



## General Terms and Conditions of Sale

### 1. Definitions

<b>“BUYER”</b>	company or individual who accepts the Seller’s Written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Seller;
<b>“GOODS”</b>	the goods and services (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Terms;
<b>“TERMS”</b>	the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

### 2. Scope

- 2.1 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 2.2 The headings in these Terms are for convenience only and shall not affect their interpretation.

### 3. Basis of the Sale

- 3.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Seller’s Written quotation (if accepted by the Buyer), or the Buyer’s Written order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 3.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 3.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations, which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 3.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer’s own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.



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- 3.5 In accordance with the applicable export control regulations including the stipulations of European and US export control law, the quotation shall only become effective in the event of a sales ban if this ban is lifted, or shall only become effective in the event that a sale is subject to a license if all required official licenses are granted. If the agreement does not enter into force on the basis of applicable export control regulations, any claims against us, in particular claims for damages, shall be excluded.
- 3.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### **4. Orders and Specifications**

- 4.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
- 4.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 4.3 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 4.4 All samples, drawings, descriptive matter, specifications (including, without limitation, any performance data) and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract, and this is not a sale by sample.
- 4.5 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 4.6 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.



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4.7 In accordance with the applicable export control regulations including the stipulations of European and US export control law, the order confirmation shall only become effective in the event of a sales ban if this ban is lifted, or shall only become effective in the event that a sale is subject to a license if all required official licenses are granted. If the agreement does not enter into force on the basis of applicable export control regulations, any claims against us, in particular claims for damages, shall be excluded.

4.8 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

### 5. Price of the Goods

5.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

5.2 The Seller reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

5.3 Except as otherwise stated in the Seller's Written quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an **ex works** basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

5.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller. If the Buyer is eligible for tax exemption a certificate must be provided with the order.



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### 6. Terms of Payment

- 6.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller may invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 6.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction);
- 6.2.1 if the Buyer is an Account Holder, within thirty (30) days of the date of the Seller's invoice; and
- 6.2.2 in all other cases and subject to any specific payment terms agreed by the Seller in writing, payment shall be made to the Seller immediately on delivery of an invoice for the goods.
- 6.3 The Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.4 No payment (in whatever form) shall be deemed to have been received until the Seller has received cleared funds.
- 6.5 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 Seller to the Buyer.
- 6.6 If the Buyer fails to make any payment on the due date, then, without limiting any other right or remedy available to the Seller, the Seller may:
- 6.6.1 cancel the contract or suspend any further deliveries to the Buyer;
- 6.6.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 6.6.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of eight (8) per cent per annum above base lending rate of the Bank of England from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 6.7 In the event of default or non-performance of payments by the Buyer, the Seller is entitled to perform outstanding Deliveries only against advance payment or provision of security and, if the advance payment or security is not provided within 2 weeks, to withdraw from the contract without setting a new deadline. Further legal or contractual claims and rights remain unaffected.



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6.8 Invoice disputes must be raised in Writing prior to the payment date of the invoice. Disputes raised after this period will not be accepted and will not suspend payment obligations.

### 7. Delivery

7.1 Delivery of the Goods shall be made ex-works by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

7.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.

7.3 Where the Seller delivers the Goods in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

7.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

7.5 If the Buyer causes delay to the shipment of the Goods, fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:

7.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage, additional costs incurred as a result of the delay; or

7.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling 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.



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### **8. Risk and Property**

- 8.1 Risk of damage to or loss of the Goods shall pass to the Buyer;
- 8.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection;  
or
- 8.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time at which the Goods have been handed over to the carrier (as determined by the Seller) for shipment or, if the shipment is delayed for reasons attributable to the Buyer, at the time when the Seller notifies the Buyer that the Goods are ready to be shipped.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 8.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Goods in the ordinary course of its business.
- 8.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 8.5 The Buyer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.



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### **9. Rights in Software Programmes**

- 9.1 The respective underlying license conditions (End User License Agreements or “EULA”) shall apply to all software delivered to the Buyer.
- 9.2 Any software programmes provided by the Seller in connection with any Goods sold to the Buyer under a Contract will at all times remain the property of the Seller and the Buyer shall not without the prior consent of the Seller in Writing disclose such programme, documentation or subsequent upgrade thereof to any third party or copy the programme (except for a single back up copy for safety purposes).
- 9.3 Subject to full payment by the Buyer of the price for the Goods, the Seller shall grant the Buyer in respect of any such software programmes a non-exclusive, perpetual and non-assignable licence to use the same, including any related documentation and updates thereof solely for the purpose of operating such software programmes in connection with the Goods to which the programmes relate.

### **10. Warranties and Liability**

- 10.1 Subject to the following provisions the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of twelve (12) months from the date of delivery.
- 10.2 The above warranty is given by the Seller subject to the following conditions:
- 10.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 10.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller’s instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller’s approval;
- 10.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 10.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller; and
- 10.2.5 the above warranty does not extend to any Goods that are identified by the Seller as having been or are being used for demonstration purposes (e.g. exhibitions, showrooms or otherwise).
- 10.3 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.



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- 10.4 Where Goods are sold to somebody acting as a Consumer (as that term is defined in the Consumer Rights Act 2015), these Terms do not exclude any term implied under that Act, which that Act expressly states cannot be excluded in such circumstances.
- 10.5 A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 10.6 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may repair or replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.
- 10.7 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.
- 10.8 Notwithstanding any other provision contained in these Terms and except in respect of death or personal injury caused by the Seller's negligence, fraudulent representation or where the Buyer acts as a consumer, the Seller shall not be liable for any claim by the Buyer for any loss or damage whatsoever and howsoever arising, unless such claim has been issued in a court of competent jurisdiction within twelve (12) months from the date on which the Buyer has first become aware or ought to have reasonably become aware (whichever occurs earlier) of the circumstances giving rise to such claim, failing which any such claim shall become time barred in its entirety.



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10.9 The Seller shall further 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 Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

10.9.1 act of God, explosion, flood, tempest, fire or accident;

10.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

10.9.3 acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

10.9.4 import or export regulations or embargoes;

10.9.5 strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

10.9.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

10.9.7 power failure or breakdown in machinery.

## 11. Indemnity

11.1 If a claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person ("an Intellectual Property Infringement"), then the Seller shall procure the steps described in clause 11.4, PROVIDED THAT the Buyer:

11.1.1 gives notice to the Seller of any Intellectual Property Infringement forthwith upon becoming aware of the same;

11.1.2 gives the Seller the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of the Seller; and;

11.1.3 acts in accordance with the reasonable instructions of the Seller and gives to the Seller such assistance as it shall reasonably require in respect of the conduct of the said defence.

11.2 The Seller shall reimburse the Buyer its reasonable costs incurred in complying with the provisions of clause 11.1 above.

11.3 The Seller shall have no liability to the Buyer in respect of an Intellectual Property Infringement if the same results from any breach of the Buyer's obligations under the Contract or if the Intellectual Property Infringement arises from the use of a drawing, design or specification supplied by the Buyer.



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- 11.4 In the event of an Intellectual Property Infringement occurring in respect of Goods sold to the Buyer under a Contract, the Seller shall at its own expense and option either:
- 11.4.1 Procure the right for the Buyer to continue using the Goods; or
  - 11.4.2 Make such alterations, modifications or adjustments to the Goods so that they become non-infringing without incurring a material diminution in performance or function; or
  - 11.4.3 Replace the Goods with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function; or
  - 11.4.4 Cancel the Contract, refund the price paid by the Buyer under the Contract in respect of the Goods and take back the Goods.
- 11.5 Except in respect of death or personal injury caused by the Seller's negligence or fraud or wilful misconduct on behalf of the Seller, the entire liability of the Seller towards the Buyer in respect of any loss or damage arising out of or in connection with an Intellectual Property Infringement shall be as set out in this clause 11 and the Buyer shall have no other claim or remedy against the Seller in this respect.

## 12. Insolvency of Buyer

- 12.1 This clause 12 applies if:
- 12.1.1 The Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or
  - 12.1.2 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
  - 12.1.3 The Buyer ceases, or threatens to cease, to carry on business; or
  - 12.1.4 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 12.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.



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### 13. Export Terms

- 13.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 13 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Terms.
- 13.2 The Buyer shall be responsible for complying with any legislation or regulations governing the exportation of the Goods from the UK and the importation of the Goods into the country of destination and for the payment of any duties on them.
- 13.3 Unless otherwise required by the Seller, payment of all amounts due to the Seller shall be made by irrevocable letter of credit, in a form acceptable to the Seller, to be opened by the Buyer in favour of the Seller and confirmed by a bank in the United Kingdom acceptable to the Seller within 14 days after the Contract is concluded.
- 13.4 The Buyer shall not offer the Goods for resale in any country or sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.
- 13.5 The Buyer shall not sell, export or re-export, directly or indirectly, to
- (i) the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with the contract that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014;
  - (ii) Belarus or for use in Belarus any goods supplied under or in connection with the contract that fall under the scope of Article 8g of Council Regulation (EC) No 765/2006,
- in its current version of the respective Council Regulation
- 13.6 The Buyer shall undertake its best efforts to ensure that the purpose of clause 13.5 is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- 13.7 The Buyer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of clause 13.5.
- 13.8 Any violation of clauses 13.5, 13.6 or 13.7 shall constitute a material breach of an essential obligation of the contract, and the Seller shall be entitled to seek appropriate remedies, including, but not limited to:
- (i) termination of the contract; and
  - (ii) a penalty of 50% of the total value of the contract or price of the goods exported, whichever is higher, but minimum £45,000.
- 13.9 The Buyer shall immediately inform the Seller about any problems in applying clauses 13.5, 13.6 or 13.7, including any relevant activities by third parties that could frustrate the purpose of clause 13.5. The Buyer shall make available to the Seller information concerning compliance with the obligations under clauses 13.5, 13.6 or 13.7 within 2 weeks following the Seller's request of such information.



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### 14. General

- 14.1 The Seller is a member of the group of companies whose holding company is Carl Zeiss AG of Carl-Zeiss-Strasse 22, 73447 Oberkochen, Germany, and accordingly the Seller may perform any of its obligations or exercise any of its rights under the Contract by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
- 14.2 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 14.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.4 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 14.5 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.