

## Stirling Dynamics Limited

### Terms and Conditions for the Supply of Goods

The Customer's attention is drawn in particular to the provisions of Condition 13.

#### 1 INTERPRETATION

##### 1.1 Definitions

In these Conditions, the following definitions apply:

**Assumptions:** the assumptions (if any) contained in the Proposal being the basis upon which the Goods are to be provided and the Charges are calculated.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Claim:** has the meaning given in Condition 9.2.

**Charges:** the charges payable for the Goods as set out in the Proposal.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with Condition 15.6.

**Contract:** the contract between Stirling and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from Stirling.

**Delivery Location:** has the meaning given in Condition 4.2.

**Due Date:** has the meaning given in Condition 11.7.

**Force Majeure Event:** has the meaning given in Condition 14.

**Goods:** the goods (or any part of them) set out in the Proposal, including any Software.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other Intellectual Property Rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form or the Customer's written acceptance of a Proposal, as the case may be.

**Proposal:** a proposal provided by Stirling to the Customer for the provision of goods by Stirling in the form of i) a commercial proposal and a technical proposal, both bearing the same reference; or ii) a commercial proposal containing details of Charges and payment profile; or iii) a technical proposal containing details of the Goods to be provided; or iv) a letter containing details of the Goods, Charges and payment profile.

**Software:** any software supplied by Stirling to the Customer under the Contract.

**Software Warranty Period:** has the meaning given in Condition 8.2.

**Specification:** any specification for the Goods, including any related plans and drawings, that are contained in the Proposal or otherwise agreed in writing by the Customer and Stirling.

**Stirling:** Stirling Dynamics Limited registered in England and Wales with company number 02092114.

**VAT:** Value Added Tax.

**Warranty Period:** has the meaning given in Condition 7.2.

## 1.2 Construction

In these Conditions, the following rules apply:

- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether having separate legal personality or not).
- 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3 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.
- 1.2.4 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.
- 1.2.5 A reference to **writing** or **written** includes faxes and e-mails.

## **2 BASIS OF CONTRACT**

- 2.1** 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 trade, custom, practice or course of dealing.
- 2.2** The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3** The Order shall only be deemed to be accepted when Stirling issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4** The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Stirling which is not set out in the Contract.
- 2.5** Any samples, drawings, descriptive matter or advertising produced by Stirling and any descriptions or illustrations contained in Stirling's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6** Any Proposal provided by Stirling to the Customer shall not constitute an offer and (unless specified otherwise in writing by Stirling in the Proposal) is only valid for a period of 90 days from its date of issue. Stirling shall ensure that, if a Proposal incorporates a Technical Proposal and Commercial Proposal, both documents relating to the same Goods will contain the same reference.

## **3 GOODS**

- 3.1** The Goods are described in the Proposal.
- 3.2** To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Stirling 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 professional costs and expenses) suffered or incurred by Stirling in connection with any claim made against Stirling for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Stirling's use of the Specification. The indemnity shall apply whether or not the Customer has been negligent or at fault and does not limit any further compensation rights of Stirling. This Condition 3.2 shall survive termination of the Contract.
- 3.3** Stirling reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements or if it receives any claim for infringement of Intellectual Property Rights from a third party.

## 4 DELIVERY

### 4.1 Stirling shall ensure that:

4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Stirling reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.2 if Stirling requires the Customer to return any packaging materials to Stirling, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Stirling shall reasonably request. Returns of packaging materials shall be at Stirling's expense.

4.2 Stirling shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Stirling notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the arrival of the vehicle carrying the Goods at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Stirling 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 Stirling with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If Stirling fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Stirling shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Stirling with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to take delivery of the Goods within three Business Days of Stirling notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Stirling's failure to comply with its obligations under the Contract:

4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Stirling notified the Customer that the Goods were ready; and

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

4.7 If [10] Business Days after the day on which Stirling notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Stirling may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and

selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

**4.8** The Customer shall not be entitled to reject the Goods if Stirling delivers up to and including [5]% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

**4.9** Stirling may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **5 SOFTWARE**

**5.1** The provisions of this Condition 5 shall apply if any of the Goods to be supplied under the Contract includes Software.

**5.2** If Stirling refers to a software licence in the Proposal, the price of the Goods includes the licence fee for the Customer's right to use the Software.

**5.3** If the Customer is provided with any licence in respect of Software, the Customer shall sign and return it to Stirling within seven days of installation of the Software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.

**5.4** If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following Conditions:

**5.4.1** the Customer shall not copy (except to the extent permissible under applicable law or, if applicable, for normal operation of the Goods), reproduce, translate, adapt, vary or modify the Software, nor communicate it to any third party, without Stirling's prior written consent;

**5.4.2** the Customer shall not use the Software on any equipment other than (if applicable) the Goods or equipment specified in the Proposal, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software or on the medium on which it resides;

**5.4.3** such licence shall be terminable by either Stirling or the Customer on not less than 20 Business Days prior written notice; and

**5.4.4** on or before the expiry of such licence, the Customer shall return to Stirling all copies of the Software in its possession.

**5.5** The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Software are and shall remain the sole property of Stirling or (as the case may be) the third-party rights owner.

**5.6** Stirling shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract and it shall be a condition of such supply that the contents of

such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of Stirling.

**5.7** Stirling's Intellectual Property Rights in and relating to the Software shall remain the exclusive property of Stirling. The Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.

**5.8** In relation to the Software:

5.8.1 the Customer acknowledges that it is buying only the media on which the Software is recorded and the accompanying user manuals;

5.8.2 nothing contained in these Conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and

5.8.3 the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all license agreements, terms of use and registration requirements relating to them.

## **6 EXPORT CONTROL**

**6.1** Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 6 shall (subject to any contrary terms agreed in writing between the Customer and Stirling) override any other provision of these Conditions.

**6.2** The Customer shall be responsible for complying with any legislation governing:

6.2.1 the importation of the Goods into the country of destination; and

6.2.2 the export and re-export of the Goods,

and shall be responsible for the payment of any duties on it.

**6.3** The Customer shall not export, directly or indirectly, any technical data acquired from Stirling under the Contract (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (Export Control Laws), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

**6.4** The Customer undertakes:

6.4.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

6.4.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

**6.5** Unless otherwise agreed in writing between the Customer and Stirling, the Goods shall be delivered free on board the air or sea port of shipment and Stirling shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

**6.6** Stirling shall be responsible for arranging for the testing and inspection of the Goods at Stirling's premises before shipment.

## **7 QUALITY**

**7.1** The provisions of this Condition 7 shall apply to any Goods that are not Software.

**7.2** Stirling warrants that on delivery, and for a period of [12] months from the date of delivery (**Warranty Period**), the Goods shall:

7.2.1 conform in all material respects with the Specification;

7.2.2 be free from material defects in design, material and workmanship; and

7.2.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

7.2.4 be fit for any purpose held out by Stirling.

**7.3** Subject to Condition 7.4, if:

7.3.1 the Customer gives notice in writing to Stirling during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Condition 7.2;

7.3.2 Stirling is given a reasonable opportunity of examining such Goods; and

7.3.3 the Customer (if asked to do so by Stirling) returns such Goods to Stirling's place of business at Stirling's cost,

7.3.4 Stirling shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

**7.4** Stirling shall not be liable for any failure of the Goods to comply with the warranty set out in Condition 7.2 in any of the following events:

7.4.1 the Customer makes any further use of such Goods after giving notice in accordance with Condition 7.3.1;

7.4.2 the defect arises because the Customer failed to follow Stirling's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

7.4.3 the defect arises as a result of Stirling following any drawing, design or Specification supplied by the Customer;

7.4.4 the Customer alters or repairs such Goods without the written consent of Stirling;

- 7.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 7.4.6 the Goods differ from the Specification as a result of changes made to ensure that they comply with applicable statutory or regulatory requirements.
- 7.4.7 the Customer resells, lends or loans the Goods or transfer the ownership of the Goods to a third party. For avoidance of doubt, any warranty is non-transferable.
- 7.5 Except as provided in this Condition 7, Stirling shall have no liability to the Customer in respect of any failure of the Goods to comply with the warranty set out in Condition 7.2.
- 7.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.7 All other conditions, warranties or other terms which might have effect or be implied or incorporated into the Contract or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 7.8 These Conditions shall apply to any repaired or replacement Goods supplied by Stirling.

## 8 SOFTWARE QUALITY

- 8.1 The provisions of this Condition 8 shall apply to any Software supplied under the Contract.
- 8.2 Stirling warrants that the Software will conform in all material respects to the Specification for a period of 90 days from the date of delivery and installation (**Software Warranty Period**). If, within the Software Warranty Period, the Customer notifies Stirling in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by Stirling, or it has not been loaded onto Stirling-specified or suitably configured equipment, Stirling shall, at Stirling's option, do one of the following:
  - 8.2.1 repair the Software;
  - 8.2.2 replace the Software; or
  - 8.2.3 terminate the licence immediately by notice in writing to the Customer and refund any of the fees paid by the Customer in relation to such Software as at the date of termination (less a reasonable sum in respect of the Customer's use of the software to the date of termination) on return of the software and all copies thereof, provided the Customer provides all the information that may be necessary to assist Stirling in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable Stirling to re-create the defect or fault.



- 8.3** Stirling does not warrant that the use of the Software will be uninterrupted or error-free.
- 8.4** The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 8.5** Any open-source software provided by Stirling (as part of the Software) may be used according to the terms and conditions of the specific licence under which the relevant open-source software is distributed, but is provided "as is" and expressly subject to the disclaimer in Condition 8.6.
- 8.6** All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Contract or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

## **9 SOFTWARE INDEMNITY**

- 9.1** The Customer acknowledges that all Intellectual Property Rights in the Software belong and shall belong to Stirling, and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of the Contract.
- 9.2** Stirling undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of this licence infringes the Intellectual Property Rights of a third party (Claim) and shall be responsible for any reasonable losses, damages, costs (including reasonable legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, this Condition 9.2 shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by the Customer other than in accordance with the terms of the Contract, use of the Software in combination with any hardware or software not supplied or specified by Stirling if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.
- 9.3** If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, Stirling's obligations under Condition 9.2 are conditional on the Customer:
- 9.3.1** as soon as reasonably practicable, giving written notice of the Claim to Stirling, specifying the nature of the Claim in reasonable detail;
- 9.3.2** not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Stirling;
- 9.3.3** giving Stirling and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or

control of the Customer, so as to enable Stirling and its professional advisers to examine them and to take copies (at Stirling's expense) for the purpose of assessing the Claim; and

- 9.3.4 subject to Stirling providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as Stirling may reasonably request to avoid, dispute, compromise or defend the Claim.
- 9.4 If any Claim is made, or in Stirling's reasonable opinion is likely to be made, against the Customer, Stirling may at its sole option and expense:
  - 9.4.1 procure for the Customer the right to continue using the Software (or any part thereof) in accordance with the terms of the licence from the owner of the Intellectual Property Rights in the Software;
  - 9.4.2 modify the Software so that it ceases to be infringing;
  - 9.4.3 replace the Software with non-infringing software; or
  - 9.4.4 terminate the licence of the Software immediately by notice in writing to the Customer and refund any of the fees paid by the Customer in relation to the Software as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,
  - 9.4.5 provided that if Stirling modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in Condition 8.2 and the Customer shall have the same rights in respect thereof as it would have had under those Conditions had the references to the date of this licence been references to the date on which such modification or replacement was made.
- 9.5 Notwithstanding any other provision in this agreement, Condition 9.2 shall not apply to the extent that any claim or action referred to in that Condition arises directly or indirectly through the possession or use of any open-source software incorporated into the Software or through the breach of any third-party licence relating to any open-source software so incorporated.
- 9.6 This Condition 9 constitutes the Customer's exclusive remedy and Stirling's only liability in respect of Claims and, for the avoidance of doubt, is subject to Condition 13.

## 10 TITLE AND RISK

- 10.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 10.2 Title to the Goods shall not pass to the Customer until Stirling has received payment in full (in cash or cleared funds) for:
  - 10.2.1 the Goods; and
  - 10.2.2 any other goods or services that Stirling has supplied to the Customer in respect of which payment has become due.

- 10.3** Until title to the Goods has passed to the Customer, the Customer shall:
- 10.3.1 hold the Goods on a fiduciary basis as Stirling's bailee;
  - 10.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Stirling's property;
  - 10.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 10.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 10.3.5 notify Stirling immediately if it becomes subject to any of the events listed in Condition 12.2; and
  - 10.3.6 give Stirling such information relating to the Goods as Stirling may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

- 10.4** If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Condition 12.2, or Stirling reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Stirling may have, Stirling may at any time require the Customer to deliver up the Goods and, 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.

## **11 PRICE AND PAYMENT**

- 11.1** The price of the Goods shall be the price set out in the Proposal and is based on the Assumptions. Stirling shall be entitled to increase the price of the Goods by giving notice to the Customer if any of the Assumptions are incorrect.
- 11.2** Stirling may, by giving notice to the Customer at any time up to 10 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 11.2.1 any factor beyond Stirling's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 11.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - 11.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give Stirling adequate or accurate information or instructions.
- 11.3** The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

- 11.4** The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from Stirling, pay to Stirling such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 11.5** Stirling may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 11.6** The Customer shall pay the invoice in full and in cleared funds, unless specified otherwise in writing by Stirling in the Proposal, by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by Stirling. Time of payment is of the essence.
- 11.7** If the Customer fails to make any payment due to Stirling under the Contract by the due date for payment (Due Date), then the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 11.8** The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Stirling in order to justify withholding payment of any such amount in whole or in part. Stirling may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Stirling to the Customer.

## **12 CUSTOMER'S INSOLVENCY OR INCAPACITY**

- 12.1** If the Customer becomes subject to any of the events listed in Condition 12.2, or Stirling reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Stirling, Stirling may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Stirling without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 12.2** For the purposes of Condition 12.1, the relevant events are:
- 12.2.1** the Customer 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) 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;
- 12.2.2** the Customer 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 other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

- 12.2.3 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 Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - 12.2.4 a creditor or encumbrancer of the Customer 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;
  - 12.2.5 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 Customer;
  - 12.2.6 a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
  - 12.2.7 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
  - 12.2.8 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 12.2.1 to Condition 12.2.7 (inclusive);
  - 12.2.9 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
  - 12.2.10 the Customer's financial position deteriorates to such an extent that in Stirling's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.3** Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **13 LIMITATION OF LIABILITY**

**13.1** Nothing in these Conditions shall limit or exclude Stirling's liability for:

- 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 13.1.2 fraud or fraudulent misrepresentation;
- 13.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 13.1.4 any matter in respect of which it would be unlawful for Stirling to exclude or restrict liability.

**13.2** Subject to Condition 13.1:

- 13.2.1 Stirling shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract including loss arising from any of the Assumptions being incorrect; and
- 13.2.2 Stirling's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

## 14 **FORCE MAJEURE**

- 14.1** Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, 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.

## 15 **GENERAL**

### **15.1** Assignment and subcontracting:

- 15.1.1 Stirling may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.1.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Stirling.

### **15.2** Notices:

- 15.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax.
- 15.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 15.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if

delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

- 15.2.3 The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.
- 15.3 Severance:**
- 15.3.1 If any court or competent authority finds that any provision of the 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.
- 15.3.2 If any invalid, unenforceable or illegal provision of the 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.
- 15.4 Waiver:** A waiver of any right or remedy under the Contract 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 15.5 Third party rights:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 15.6 Variation:** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Stirling.
- 15.7 Governing law and jurisdiction:** 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, English law. The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales, save that Stirling shall be free to enforce its Intellectual Property Rights in any jurisdiction.
- 15.8 Compliance with Foreign Regulatory Regimes:**
- 15.8.1 The Customer shall ensure that all customer furnished items to be delivered to Stirling that are of US-origin and ITAR-controlled, or incorporate US-origin ITAR-controlled technology, are accompanied by a 'United States Export Authorisation', issued by the U.S. Department of State, Office of Defense Trade Controls. This 'Export Authorisation' shall include written authority to receive the customer furnished items or information including re-export to the Customer, through Stirling in the United Kingdom or through another country as directed by the Customer.