

Terms and Conditions for the Supply of Equipment & Products

The terms set out below apply in so far as TSG UK provides any Goods to the Customer. They should be read alongside the Quotation.

1 Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in the Contract:

Additional Charges shall have the meaning given to it in clause 8.8;

Business Day means a day other than a Saturday, Sunday or public holiday in Scotland or England, when banks in London and Edinburgh are open for business;

Charges means the charges payable by the Customer under the Contract in accordance with the Quotation and clause 8 below;

Commencement Date has the meaning given in clause 2.1;

Consequential Loss means (a) consequential or indirect loss under the law of England and Wales; and (b) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), loss of information, business interruption or loss of, damage to, or corruption of data, in each case whether direct or indirect to the extent that these are not included in (a), and whether or not foreseeable at the Commencement Date;

Contract means the contract between TSG UK and the Customer for the supply of Goods comprising the Quotation, these Terms and Conditions and any other applicable terms as set out in the Quotation;

Customer means the person (legal or otherwise) or entity who purchases Goods from TSG UK as narrated in the Quotation;

Customer Default means has the meaning set out in clause 7.2;

Data Protection Laws means all laws that relate to data protection, the use of information relating to individuals, and/or the information rights of individuals and all laws implementing them, in each case as may be replaced, extended or amended, including, without limitation, the General Data Protection Regulation (EU) 2016/679;

Force Majeure Event means an event or circumstance beyond a party's reasonable control (including, without limitation, fire, flood, war, riot, civil commotion, strike and industrial dispute, unforeseen contingency, inevitable accident, pandemic (including, without limitation, COVID-19 virus); or act of God);

Terms and Conditions means these terms and conditions as amended from time to time;

Goods means the goods, or any part of them, to be provided by TSG UK to the Customer as set out in the Quotation;

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, moral rights, trade marks and domain names, 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 on 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;

Proposal refers to any written proposal previously issued by TSG UK to the Customer relating to the supply of goods;

Quotation means the separate document (referring to these Terms and Conditions) issued by TSG UK to the Customer and specifying the Goods to be supplied by TSG UK to the Customer;

Service and Maintenance Terms and Conditions means the separate terms and conditions issued from time to time by TSG UK in respect of service and maintenance of equipment;

Specification means the description or specification of the Goods set out in the Quotation;

TSG UK means TSG UK Solutions Ltd, a company incorporated in Scotland under company number SC517423 having its registered office at 19 Canning Street, Edinburgh, Scotland, EH3 8EH; and

TSG UK's Materials shall have the meaning given to it in clause 7.1(g).

1.2 Interpretation:

- (a) 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.
- (b) 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.
- (c) A reference to writing or written includes email.
- (d) The headings of clauses in these Terms and Conditions are for convenience of reference only and shall not affect the construction or interpretation of these Terms and Conditions.

2 Basis of contract

- 2.1 The Quotation constitutes an offer by TSG UK to the Customer to sell the Goods to the Customer. The Contract shall come into existence on the earlier of:- (i) the Customer issuing a written acceptance of the Quotation to TSG UK; or (ii) the Goods being dispatched by TSG UK to the Customer (**Commencement Date**) and shall continue thereafter until the Contract is completed or as otherwise specified in the Quotation. The Customer shall be responsible for ensuring that the terms of the Quotation and any applicable Specification are complete and accurate.
- 2.2 For the avoidance of doubt the Proposal does not form part of the Contract.
- 2.3 If there is any conflict or ambiguity between the terms of the documents forming the Contract then the following order of priority shall apply:
 - (a) the Quotation; and

- (b) these Terms and Conditions.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by TSG UK, and any descriptions or illustrations contained in TSG UK'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 or have any contractual force.
- 2.5 (Unless otherwise stated in the Quotation) the Quotation is only valid for a period of 30 days from its date of issue.
- 2.6 TSG UK reserves the right to amend the Specification in a Quotation at any time if required by any applicable statutory or regulatory requirements.
- 2.7 TSG UK reserves the right to correct any errors or omissions in the Quotation (even after its acceptance by the Customer).
- 2.8 The Quotation is subject to import duties or taxes, if any, pertinent to the relevant country or port of destination of the Goods for which import duties or taxes the Customer shall be liable.
- 3 Inspection and Test, Automatic Temperature Compensation specific terms and Delivery**
- 3.1 The Goods are fully inspected at TSG UK's workshop where practicable and subject to TSG UK's standard tests before dispatch. If tests are required to be witnessed by the Customer's representative notice of this requirement must be given to TSG UK at the time of the Customer's acceptance of the Quotation and notice of readiness will then be given by TSG UK to the Customer in advance of such tests being carried out. In the event of any delay on the Customer's part in attending such tests or carrying out any inspection, the tests will proceed in the Customer's absence and shall be deemed to have been made in the Customer's presence. In any event, the Customer shall be required within three (3) days of witnessing the test, if such be the case, or within three (3) days after receiving test results of witnessed or unwitnessed tests to notify TSG UK in writing of any claim to defects in the Goods where it is claimed that the Goods do not conform with the Contract. Before the Customer becomes entitled to reject any Goods TSG UK are to be given reasonable time and opportunity to rectify them. TSG UK assume that the Goods stipulated by the Customer are sufficient and suitable for the Customer's purposes save in so far as the Customer's stipulations are in accordance with TSG UK's advice and that the Customer has taken and will take all steps to ensure that the Goods will be safe and without risk to health when properly used.
- 3.2 In addition to the terms of clause 3.1 above, the operation of automatic temperature compensation (ATC) requires the Customer to operate their own regime of ongoing inspection and test in order to monitor equipment performance against environmental conditions. The Customer is not entitled to reject any ATC products unless the Customer can prove via an authorised monitoring organisation that the equipment is not operating within required parameters. TSG UK will be entitled to a reasonable time and opportunity to rectify should the Customer provide such evidence.
- 3.3 Unless otherwise set out in the Quotation, TSG UK shall deliver the Goods:-
- (a) to the Customer's designated site if within the UK; or
- (b) on an Ex Works INCOTERMS 2020 basis.
- 3.4 TSG UK will arrange freight and insurance for the Goods at the Customer's expense if requested by the Customer and reserves the right to charge for export packaging.

- 3.5 Where Goods are supplied by TSG UK on an Ex Works basis, delivery shall be completed on notification to the Customer that the Goods are available for collection from TSG UK's premises at its head office address (by Longforgran, Dundee, DD2 5HU) or at such other address as may be stated in the Quotation.
- 3.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Liability will not be accepted by TSG UK unless written advice is received by TSG UK within seven (7) working days of the date of delivery for damaged Goods or within seven (7) days of the date of dispatch in the case of non-receipt of Goods. TSG UK 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 TSG UK with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. For the avoidance of doubt TSG UK shall not be liable for any failure to supply the Goods and / or any delay in supplying the Goods to the Customer where such failure and / or delay is due to TSG UK's compliance with any UK, Scottish and / or foreign government, statutory, local and / or public authority guidance issued as a consequence of or related directly or indirectly to the outbreak and / or spread of any pandemic or epidemic (including, without limitation, COVID-19 virus).
- 3.7 The selection of method of shipment and carrier in respect of the Goods shall be exercised by TSG UK entirely at its discretion and as deemed necessary by TSG UK.

4 Specification

- 4.1 TSG UK's equipment specifications are subject to continued review. TSG UK accordingly reserves the right at its absolute discretion and without prior notice to alter or revise any specification (including the Specification) or detail of equipment or Goods from those which may have been published or quoted or agreed from time to time. As to contracts to design and develop a special product to meet a Customer's individual requirements, TSG UK will endeavour to design and deliver special products to meet the purposes and specifications described by the Customer but no warranty or condition is hereby implied by TSG UK as to merchantability or fitness for purpose of any special product save as contained in or required by statute.
- 4.2 All equipment (Goods) is supplied under warranty terms from TSG UK as detailed below, which will commence from the date of delivery:
- (a) new dispensers, either:
 - (i) one year – parts only;
 - (ii) one year – parts and labour;
 - (iii) or special service contract,as detailed in the Quotation;
 - (b) new spare part sales – one year parts only;
 - (c) second hand spare part sales – three months parts only;
 - (d) refurbished dispensers – three months parts and labour;
 - (e) automatic temperature compensation retrofit units – three months parts and labour.

- 4.3 Within the relevant warranty period specified in clause 4.2, TSG UK shall repair or replace such products (Goods) which are determined by TSG UK in its own discretion to be defective following the Customer notifying a warranty claim to TSG UK in writing and TSG UK having the opportunity to examine the Goods in question.
- 4.4 The warranties in clauses 4.2 and 4.3 above will not apply:-
- (a) to any product (Good) which has been subject to misuse, vandalism, negligence or accident or misapplied or modified or repaired by unauthorised persons; or improperly installed;
 - (b) where the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.3;
 - (c) where the defect arises because the Customer failed to follow TSG UK'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;
 - (d) where the defect arises as a result of TSG UK following any drawing, design or Goods Specification supplied by the Customer;
 - (e) where the Customer alters or repairs such Goods without the written consent of TSG UK;
 - (f) where the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - (g) where the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
 - (h) to any issues with the Goods which are caused by or related to the fuel dispensed and / or fuel issues and / or filter issues (including, but not limited to, filter blockages);
 - (i) to any issues arising as a result of grade changes or changes to fuel specifications; or
 - (j) to any electrical work or pipework requiring to be carried out.
- 4.5 For the avoidance of doubt any of the services listed in clause 4.1 of the Service and Maintenance Terms and Conditions will not be provided by TSG UK to the Customer free of charge under the warranties in clauses 4.2 and 4.3 above.
- 4.6 TSG UK's standard chargeable rates from time to time (details of which are available from TSG UK on request) would apply to any work of the kind listed in clauses 4.4(h) to 4.4(j) above which the Customer might request TSG UK to carry out from time to time.
- 4.7 All abortive and 'no fault found' visits will be charged by TSG UK to the Customer at TSG UK's standard chargeable rates from time to time (details of which are available from TSG UK on request).
- 4.8 No representations, warranties or conditions, express or implied are given by TSG UK except those herein contained and no agreements or waivers collateral hereto shall be binding unless in writing and signed by the Customer and accepted by TSG UK at its main office.

4.9 These Terms and Conditions shall apply to any repaired or replacement Goods supplied by TSG UK to the Customer.

5 Title and risk

5.1 The risk in the Goods shall pass to the Customer on completion of delivery. The Customer will fully insure the Goods for all normal risks from the date of delivery of the Goods. In the event of any delay in delivery of the Goods taking place owing to the fault of the Customer, TSG UK will store the Goods but will charge for so doing at TSG UK's prevailing storage rates from time to time. Any invoicing for such charges will be paid by the Customer within 30 days of the invoice date. Whilst any such storage is taking place (subject to the Customer paying TSG UK's charges for such storage) the Goods so stored shall be covered by TSG UK's insurance.

5.2 Title to the Goods shall not pass to the Customer until TSG UK receives payment in full (in cleared funds) for the Goods.

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

- (a) have possession of the Goods only as TSG UK's agent;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as TSG UK's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
- (e) give TSG UK such information relating to the Goods as TSG UK may require from time to time.

5.4 If at any time payment of the Charges for any Goods (or of any other sums due to TSG UK by the Customer) is overdue, TSG UK may by its servants or agents at the Customer's expense, enter upon the Customer's premises and recover and take away the Goods or render them inoperable, and the Customer shall make no claim against TSG UK in respect of such actions or disposal save to recover any balance due to the Customer after TSG UK has disposed of the Goods and recouped all sums due from the Customer to TSG UK. For this purpose, the Customer hereby grants an irrevocable right to TSG UK's servants and agents to enter into or upon all or any of the Customer's premises or access, with or without vehicles. This right shall continue to subsist notwithstanding the termination of the Contract for any reason and is without prejudice to any accrued rights of TSG UK. If the Customer mixes the Goods with any other objects, or converts the Goods into other objects, whether by the process of manufacture, assembly or otherwise and whether or not such a mixture or conversion renders the Goods unidentifiable, the property in the mixture or the converted Goods (as the case may be), shall forthwith pass to TSG UK and remain with TSG UK from that moment of mixture or conversion until the Customer has paid all sums due to TSG UK in full and the provisions of this clause 5.4 shall apply to any such mixture or converted Goods as if it or they were the Goods themselves. If the Customer shall, before title in the Goods passes to the Customer, sell or otherwise dispose of the Goods or any such mixture or converted Goods, as aforesaid, to a third party, the Customer shall hold the proceeds of any such sale or disposal and any rights or claims against third parties arising out of such sale or disposal in a fiduciary capacity for and to the account of TSG UK as TSG UK's agent, and the Customer shall take all steps necessary to keep such

proceeds separate from other monies, to pay over such proceeds to TSG UK, and to transfer to TSG UK any such rights or claims against third parties to the extent necessary to discharge in full the Customer's indebtedness to TSG UK. The Customer will hold the proceeds of any such sale or disposal in a separate bank account. The Customer has no authority from TSG UK to enter into any contract or to make any representations whereby TSG UK is rendered liable to any third party for any breach of contract or for the inaccuracy of any representation, except to the extent (if any) that such authority is conferred by law or expressly given to the Customer by TSG UK in writing.

- 5.5 If at any time payment of the Charges for any Goods (or of any other sums due to TSG UK by the Customer) is overdue TSG UK shall be entitled to cease the supply of any services being provided by TSG UK to the Customer relating to the Goods until payment of such Charges is made in full.
- 5.6 TSG UK shall at all times retain as its property the Department of Trade serial plate which is affixed to the Goods sold which details the Government approval(s) under which the Goods are solely manufactured by TSG UK.

6 Retention of title

- 6.1 On termination of the Contract for any reason, the Customer shall return to TSG UK any Goods which have not been fully paid for. If the Customer fails to do so, then TSG UK may enter the Customer's premises and take possession of any such Goods and Customer shall take all necessary steps promptly to permit such entry and the taking of such possession. Until such Goods have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

7 Customer's obligations

- 7.1 The Customer shall:
- (a) ensure that the terms of the Quotation and any information it provides in the Specification are complete and accurate;
 - (b) co-operate with TSG UK in all matters relating to the Contract;
 - (c) provide TSG UK, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by TSG UK from time to time;
 - (d) provide TSG UK with such information and materials as TSG UK may reasonably require from time to time in order to provide the Goods, and ensure that such information is complete and accurate in all material respects;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required for the supply of the Goods by TSG UK before the date of their delivery by TSG UK;
 - (f) comply with all applicable laws, including health and safety laws;
 - (g) keep all materials, equipment, documents and other property of TSG UK (**TSG UK's Materials**) at the Customer's premises in safe custody at its own risk, maintain TSG UK's Materials in good condition until returned to TSG UK, and not dispose of or use

TSG UK's Materials other than in accordance with TSG UK's written instructions or authorisation; and

- (h) comply with any additional obligations as set out in the Quotation and these Terms and Conditions.

7.2 If TSG UK'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**):

- (a) TSG UK shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from TSG UK's failure or delay to perform any of its obligations under the Contract;
- (b) without limiting or affecting any other right or remedy available to it, TSG UK shall have the right to suspend performance of any obligation under the Contract 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 TSG UK's performance of any of its obligations; and
- (c) the Customer shall reimburse TSG UK on written demand for any costs or losses sustained or incurred by TSG UK arising directly or indirectly from the Customer Default.

8 Payment

8.1 The Charges for the Goods shall be as set out in the Quotation. TSG UK shall invoice the Customer on the terms as set out in the Quotation. Payment shall be made by the Customer in accordance with the Quotation, or if not stated in the Quotation, 50% deposit with order, and 50% within 6 calendar weeks from the Commencement Date.

8.2 The Customer shall pay each invoice submitted by TSG UK in full and in cleared funds to a bank account nominated in writing by TSG UK, and time for payment shall be of the essence of the Contract. The Customer shall not in any circumstances be entitled to delay paying any of the Charges to TSG UK when due for payment on the basis that the Customer is waiting for third party finance to finance the purchase by the Customer of the Goods from TSG UK.

8.3 Where delivery is to be delayed due to any reason out of TSG UK's control, TSG UK reserves the right to invoice the Goods to the full value in the Quotation, on the original agreed delivery date. The Customer is then required to confirm with TSG UK a revised delivery date no later than 30 days beyond the original agreed delivery date or storage charges of £65 + VAT per dispenser or system per week shall apply. Any product sold under discount will revert to TSG UK's normal list price should payment not be received in full by TSG UK from the Customer by the due date and a further invoice for the difference will be issued accordingly by TSG UK to the Customer. All payments made prior to any cancellation by the Customer are non-refundable.

8.4 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 TSG UK to the Customer, the Customer shall, on receipt of a valid VAT invoice from TSG UK, pay to TSG UK such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Goods.

- 8.5 If the Customer fails to make any payment due to TSG UK under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of three per cent (3%) above the prevailing Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.6 In the event of any amount payable to TSG UK by the Customer being overdue TSG UK may additionally, without prejudice to any other right, suspend further delivery or supply to the Customer of any Goods and/or stop any Goods in transit and/or cease the supply of any services being provided by TSG UK to the Customer relating to the Goods and/or terminate the Contract and/or exercise its rights under these Terms and Conditions.
- 8.7 All amounts due under the Contract shall be paid in full in pounds sterling without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.8 In addition to the Charges as set out in the Quotation, TSG UK shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom TSG UK engages in connection with the performance of TSG UK's obligations under the Contract, including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by TSG UK for the performance of the Contract and for the cost of any materials provided such expenses are pre-approved by the Customer (**Additional Charges**). TSG UK shall invoice the Customer for any Additional Charges monthly in arrears.

9 Intellectual Property Rights

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Contract (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by TSG UK. All Intellectual Property Rights of whatever nature that subsist or may subsist in any specifications, drawings, plans, designs, and technical documents and information supplied by the TSG UK to the Customer are and shall remain TSG UK's exclusive property and the Customer undertakes to keep confidential and not to modify or use or make any copy of any such specifications, drawings, plans, designs and technical documents and information. The Customer is granted a limited licence to use and undertakes to use any software supplied with or comprised in the Goods only on such Goods. Such limited licence shall be personal to the Customer and shall not be assigned, transferred or sub-licensed without TSG UK's prior written consent which it may in its absolute discretion grant or withhold.
- 9.2 Subject to the Quotation, TSG UK grants to the Customer, or shall use reasonable endeavours to procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free irrevocable licence during the term of the Contract to use (but not to reproduce) the Goods (excluding materials provided by the Customer) for the purpose of receiving and using the Goods in its business. TSG UK shall not be liable for any use by the Customer of the Goods or any design content of them or any software supplied with or comprised in the Goods for any purpose other than that for which they were prepared.
- 9.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in the Contract.

- 9.4 The Customer grants TSG UK a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to TSG UK for the term of the Contract for the purposes of TSG UK then supplying the Goods to the Customer.
- 9.5 TSG UK will indemnify the Customer against any claim of infringement of patent, registered design, trade mark (published at the date of the contract of sale) or copyright by the use of the Goods supplied by TSG UK to the Customer hereunder and against all costs and damages (less any costs or damages recoverable from the claimant) which the Customer may incur or for which the Customer may become liable in any action for such infringement provided always that this indemnity shall not apply to any infringement which is due to TSG UK having followed a design or instruction furnished or given by the Customer or to the use of such Goods in a manner or for a purpose or in a foreign country not specified or disclosed to TSG UK prior to the Quotation, or to the use of such Goods in association or combination with any other article, material, or service not supplied by TSG UK. Provided also that this indemnity is conditional on the Customer giving TSG UK the earliest possible notice in writing of any claim being made or action threatened or brought against the Customer and on the Customer making no admission and permitting TSG UK at TSG UK's own expense to conduct any litigation that may occur and all negotiations for a settlement of the claim or action. The Customer on its part warrants that any design or instruction furnished or given by the Customer to TSG UK shall not be such as will cause TSG UK to infringe any Intellectual Property Rights in the execution of the Contract.

10 Data Protection

- 10.1 For the purposes of this clause 10, **Controller, Personal Data, Processor, Personal Data Breach, Supervisory Authority, process, processing, processed** and **Data Subject** shall have the meanings given under Data Protection Laws.
- 10.2 Insofar as TSG UK acts as a Processor on behalf of the Customer, TSG UK (without prejudice to TSG UK's responsibilities as a Controller) shall:
- (a) only be entitled to Process Personal Data for the duration of the Contract unless otherwise expressly provided, in which case the Processing shall only last as long as is necessary under (and fully in compliance with) the Data Protection Laws (the "**Duration**") and only to the extent necessary for the provision of the Goods to the Customer (the "**Purpose**"). The subject-matter of the Processing of the Personal Data is set out in the Contract (the "**Subject-Matter**") and the nature and purpose of the Processing is the Purpose. The Data Subjects whose Personal Data TSG UK is entitled to Process are those Data Subjects as necessary for the fulfilment of the Contract (the "**Categories of Data Subjects**"), and the types of Personal Data which TSG UK may Process are those types of Personal Data as necessary for the fulfilment of the Contract (the "**Type of Personal Data**");
 - (b) taking into account the nature of the processing, implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
 - (c) process Personal Data only on the documented instructions of the Customer, except to the extent that any processing of Personal Data is required by applicable laws;
 - (d) notify the Customer where TSG UK reasonably believes any documented instructions from the Customer in respect of the processing of Personal Data infringe any Data Protection Laws or any other applicable laws;

- (e) at the Customer's expense, assist the Customer in its compliance with its obligations under Data Protection Laws in respect of security of processing, carrying out data protection impact assessments (as defined in Data Protection Laws), remedial action to be taken in response to a Personal Data Breach (including notifying Personal Data Breaches to the Supervisory Authority and affected Data Subjects) and consulting with the Supervisory Authority regarding high risk Processing, in each case insofar as it is able taking into account the nature of the processing and the information available to TSG UK;
- (f) ensure that its personnel who are authorised to process the Personal Data have committed themselves to confidentiality;
- (g) not appoint a sub-processor without giving prior written notice of such appointment of no less than 30 Business Days to the Customer;
- (h) not transfer Personal Data to a country or territory outside the United Kingdom and European Economic Area except with the prior written consent of the Customer or on the instructions of the Customer;
- (i) notify the Customer without undue delay if it receives any: (i) request from a Data Subject to access that Data Subject's Personal Data; (ii) complaint or request relating to the Data Protection Laws and / or (iii) correspondence from a Supervisory Authority;
- (j) notify the Customer without undue delay in the event it becomes aware of any Personal Data Breach;
- (k) unless otherwise required by Data Protection Laws, shall return or delete, at the Customer's sole discretion, all Personal Data upon the termination of the processing activities carried out under the Contract; and
- (l) permit, at the cost of the Customer, on an annual basis, reasonable access by the Customer to all records, files, tapes, computer systems, or any other information howsoever held by TSG UK in respect of TSG UK's activities pursuant to the Contract for the purposes of reviewing compliance with this clause 10.

10.3 The provisions of this clause 10 shall survive termination or expiry of the Contract.

11 Limitation of Liability

11.1 The restrictions on liability in this clause 11 apply to every liability arising under or in connection with the Contract including liability in contract, tort / delict (including negligence), misrepresentation, restitution or otherwise.

11.2 Neither party may benefit from the limitations and exclusions set out in this clause 11 in respect of any liability arising from its deliberate default.

11.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and

- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.4 Subject to clause 11.3, TSG UK's entire liability to the Customer in respect of all claims, losses, costs or other liabilities arising under the Contract (whether in contract, tort (including negligence) breach of statutory duty, or otherwise) shall not exceed the aggregated invoice price of the item or items (Goods), giving rise to such liability, supplied or to be supplied by TSG UK to the Customer.
- 11.5 This clause 11.5 sets out specific heads of excluded loss and exceptions from them:
- (a) Subject to clause 11.3, the types of loss listed in clause 11.5(b) are wholly excluded by the parties.
- (b) The following types of loss are wholly excluded (even if such loss was reasonably foreseeable or a party had been advised by the other party of the possibility of incurring the loss):-
- (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill;
 - (vii) Consequential Loss; and
 - (viii) any loss whatsoever or howsoever arising.
- 11.6 Subject to clause 11.3, TSG UK shall have no liability to the Customer in respect of any claim or circumstance arising under the Contract unless the Customer shall have served notice of the same upon TSG UK within 90 days of the date it became aware (or ought reasonably to have become so aware) of the circumstances giving rise to the claim. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 11.7 The Customer shall afford TSG UK not less than 30 days (following written notification thereof by the Customer) in which to remedy any event or circumstance which could give rise to a claim under the Contract.
- 11.8 This clause 11 shall survive termination of the Contract.

12 Termination

- 12.1 TSG UK will require payment by the Customer of reasonable charges for costs incurred by TSG UK resulting from any termination or reduction of any order by the Customer.
- 12.2 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:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) 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;
- (c) 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 is unable to pay its debts as they fall due; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.3 Without affecting any other right or remedy available to it, TSG UK may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract (or under any other written agreement between the parties) on the due date for payment; or
- (b) there is a change of control of the Customer.

12.4 Without affecting any other right or remedy available to it, TSG UK may suspend the supply or delivery of Goods under the Contract or any other contract between the Customer and TSG UK and/or stop any Goods in transit and/or cease the supply of any services being provided by TSG UK to the Customer relating to the Goods and/or terminate the Contract if the Customer fails to pay any amount due under the Contract on the due date for payment or if the Customer becomes subject to any of the events listed in clause 12.2(b) to clause 12.2(d) or TSG UK reasonably believes that the Customer is about to become subject to any of them.

13 Consequences of Termination

13.1 On termination of the Contract:

- (a) the Customer shall immediately pay to TSG UK all of TSG UK's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, TSG UK shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
- (b) the Customer shall return to TSG UK all of TSG UK's Materials and any Goods which have not been fully paid for. If the Customer fails to do so, then TSG UK 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 the Contract.

13.2 Termination of the Contract shall not affect any rights, remedies, obligations or 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.

13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14 General

14.1 **Assignment.** 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/or obligations under the Contract. TSG UK may freely assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and/or obligations under the Contract provided prior written notice is given to the Customer.

14.2 **Force majeure.** 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 a Force Majeure Event. If the period of delay or non-performance continues for three months, the party not affected may terminate the Contract immediately by giving written notice to the affected party.

14.3 Confidentiality

(a) Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.3(b).

(b) Each party may disclose the other party's confidential information:

(i) 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 14; and

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

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

(d) This clause 14.3 shall survive termination of the Contract.

14.4 Entire agreement

(a) The Contract constitutes the entire agreement and understanding between the parties (whether written or oral) regarding the subject matter of the Contract and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to such subject matter.

(b) 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. This clause shall not limit or exclude liability for fraud or fraudulent misrepresentation.

- 14.5 **Variation.** Except as set out in the Contract, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 14.6 **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.
- 14.7 **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 shall not affect the validity and enforceability of the rest of the Contract.
- 14.8 **Notices**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be 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 sent by email.
- (b) Any notice or communication shall be deemed to have been received:
- (i) if delivered by hand, on signature of a delivery receipt;
- (ii) 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 or at the time recorded by the delivery service; and
- (iii) 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 14.8(b)(iii), 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.
- (c) This clause 14 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 14.9 **Third party rights.** (Subject to clause 14.1) a person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.10 **Frustration.** If the Contract or any part of it shall become impossible to perform or otherwise frustrated, TSG UK shall be entitled to a fair and reasonable proportion of the price in respect of the work done up to the date thereof and for this purpose any monies previously paid by the Customer shall be retained as against the sum due to TSG UK under this provision, any balance to be repaid to the Customer as the case may be, any deficiency to be paid to TSG UK by the Customer. TSG UK may dispose of the products as it may think fit, due allowance being made to the Customer for the net proceeds thereof.
- 14.11 **Fairness and Materiality.** The Customer agrees that the Terms and Conditions herein contained are fair and reasonable in all aspects and each of them is material.

- 14.12 **Improper payments.** The Customer is prohibited from engaging in any corruption, extortion or embezzlement, in any form. The Customer must comply with all applicable anti-corruption laws and regulations of the countries in which they operate, the U.S. Foreign Corrupt Practices Act, the Bribery Act 2010 in the UK, the OECD Anti-Bribery Convention and any international anti-corruption conventions. The Customer will not offer or accept bribes or employ other means to obtain an undue or improper advantage. Bribes, kickbacks, facilitating payments and similar payments to government officials or to TSG UK's employees or agents acting on TSG UK's behalf are prohibited.
- 14.13 **Governing law and jurisdiction.** 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 laws of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have non-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.