STANDARD CONDITIONS OF SALE OF MACTAGGART, SCOTT & CO. LTD. ("MACTAGGART SCOTT") v7.0

1. **DEFINITIONS**

In these Conditions:

Appropriate Authority means an authority having proper commercial jurisdiction in respect of the matter in question;
Authorised Representative means those persons designated as such by MacTaggart Scott with appropriate commercial authority;
Buyer means the purchaser of the Deliverables;
Conditions means these Standard Conditions of Sale;
Confidential Information means all Information or data of a confidential nature (whether oral, visual, recorded in writing, in any other medium or by any other method) disclosed to or obtained by the Buyer from MacTaggart Scott or from a third party, including any contractual information relating to a party's operations, processes, plans, intentions, Price lists, pricing structures, know-how, design, rights, trade secrets, software, marketing opportunities, customers, business affairs, confidential drawings and other general commercial intelligence;
Contract means the agreement between MacTaggart Scott and the Buyer for the supply of Deliverables formed in accordance with Clause 2 and will include these Conditions and the Order;
Deliverables means the quantifiable goods, whether raw material or finished product; and/or services, or software and/or technology that are agreed to be supplied to the Buyer by MacTaggart Scott upon completion of the Contract;
End User/Consignee Undertaking means the undertaking form completed and in the format set out by the United Kingdom's Department for International Trade;
Information means all drawings, descriptions, specifications, designs, documents and other Information (including without limitation features contained in any of the foregoing or in any objects or software) whether business or technical;
Intellectual Property Rights means all patents, rights to inventions, copyright and related rights, trademarks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets) and all other Intellectual Property Rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
Order means a Purchase Order issued by the Buyer, incorporating these Conditions, under which Deliverables are to be supplied and/or performed together with all the specifications and documents attached or referred to therein and any later amendment agreed between MacTaggart Scott and the Buyer;
Order Acknowledgement means MacTaggart Scott's Order Acknowledgement in respect of the provision of the Deliverables;
Price means the Price and/or charge of the Deliverables as stated in the Order Acknowledgement and, where the context permits, the Price for any part delivery or performance of the Deliverables, where the goods are to be delivered or the services are to be performed in stages;

2. **CONTRACT FORMATION**

2.1 The Contract is entered into and all quotations are given subject to these Conditions which may only be varied and waived by written agreement between MacTaggart Scott and the Buyer. No Contract will be made until MacTaggart Scott has accepted in writing an Order placed by the Buyer. If these Conditions differ from the terms of any offer made or Order placed by the Buyer, any subsequent communication by MacTaggart Scott constitutes a counter-offer and not acceptance of such terms. Any quotation is given by MacTaggart Scott on the basis that no Contract shall come into existence until MacTaggart Scott dispatches an Order Acknowledgement to the Buyer. The quotation may therefore be varied or withdrawn without notice.

3. **DESCRIPTIONS**

3.1 All photographs, drawings, descriptions and details in MacTaggart Scott catalogues, Price lists and other documents are only indicative of a type of product and do not constitute warranties, Conditions or representations. No report, representation, advice, communication or statement made by a representative of MacTaggart Scott shall be binding on MacTaggart Scott unless expressly contained herein, subject to Clause 16.4.2. MacTaggart Scott reserves the right to incorporate improvements in the general development of its products and make and charge for mandatory modifications to the Deliverables.

4. **CONFORMANCE TO SPECIFICATIONS**

4.1 MacTaggart Scott shall provide the quantity, quality and description for the Deliverables as set out in the quotation, unless MacTaggart Scott agrees otherwise in writing (signed by an Authorised Representative of MacTaggart Scott).

4.2 The specification for the Deliverables will be that supplied by the Buyer or supplied by MacTaggart Scott as the case may be, and for which the Buyer has been quoted, unless otherwise agreed in writing signed by an Authorised Representative of MacTaggart Scott.

4.3 MacTaggart Scott reserves the right to make any changes in the specification of the Deliverables that are required to conform with any applicable statutory or regulatory requirements in force from time-to-time and to alter or substitute the goods or the method of supply of the services provided that:

4.3.1 the changes do not materially affect the quality or performance of the Deliverables; and

4.3.2 such alteration or substitution is approved by any Appropriate Authority where such approval is required.

4.4 The Buyer is responsible for:

4.4.1 giving MacTaggart Scott any Information, documentation and materials relating to the Deliverables that MacTaggart Scott reasonably requires within a sufficient time to enable MacTaggart Scott to perform the Contract in accordance with these Conditions;

4.4.2 ensuring the accuracy of the Conditions of all Orders (including the Conditions of any applicable specifications) and other Information submitted by the Buyer in accordance with Clause 4.4.1; and

4.4.3 (without affecting the generality of Clause 4.4.1) giving MacTaggart Scott any Information, documentation and materials which MacTaggart Scott reasonably requires in order to comply with its quality control procedures in force from time-to-time.

5. **CANCELLATION**

5.1 MacTaggart Scott reserves the right to accept or reject any request for cancellation from the Buyer. In the event of such a request being acceptable to MacTaggart Scott, the Buyer will pay to MacTaggart Scott such reasonable costs as agreed between the parties at the time of cancellation as to compensate MacTaggart Scott for work completed in pursuance of the provision of the Deliverables including, but not limited to, any delivery costs and any binding commitments entered into in the proper execution of the Contract.

6. **PRICE**

6.1 Unless otherwise agreed in writing, all Prices quoted are inclusive of the Conditions of delivery stated in the quotation, trade packed and apply only in relation to the total quantities and dates and rates of delivery quoted. All Prices are subject to the addition of all other duties and taxes (including where applicable Value Added Tax at the rate ruling at the relevant tax point). If MacTaggart Scott is required to pay any taxes or duties on the Buyer's behalf, the Buyer will reimburse MacTaggart Scott immediately on demand.

6.2 MacTaggart Scott reserves the right, by giving written notice to the Buyer at any time before delivery, to adjust the Price of the Deliverables to take account of increases in the cost to MacTaggart Scott which is due to any factor beyond the control of MacTaggart Scott such as, but not limited to, costs of components or equipment not manufactured by MacTaggart Scott, raw materials, general commodities freight or insurance, rates of currency exchange, duties, taxes, import/export tariffs or surcharges, extraordinary inflation, or improvements or mandatory modifications made under Clause 4.3 above.

6.3 Any Order placed by the Buyer must reference the MacTaggart Scott quote number.

6.4 Even though a Price may be listed for the provision of a Deliverable in a quotation or in any other pricing indications in any other correspondence, MacTaggart Scott does not guarantee that the Deliverable will actually be available.

7. **PAYMENT**

7.1 Unless otherwise agreed in writing, all payments will be made in full without deduction or withholding in cash in pounds sterling within thirty (30) days from the date of invoice and free of set-off or counterclaim. Failure by the Buyer to make payment in accordance with the Conditions agreed will, without prejudice to any other remedies MacTaggart Scott may have, render the Buyer liable to pay interest upon the total sums outstanding calculated at the rate of 2% above Sterling Overnight Index Average (SONIA) from time-to-time in force calculated from the date of delivery, such interest accruing on a daily basis and being payable on demand. Time for payment is of the essence of the Contract.

7.2 The Buyer will pay the Price specified on the invoice in cleared funds to MacTaggart Scott's nominated bank account specified on the invoice or such other bank account of which MacTaggart Scott gives the Buyer notice of from time-to-time. Unless otherwise agreed to by MacTaggart Scott at its discretion, payment by credit card will not be accepted.

7.3 Where the Contract Price exceeds £50,000, MacTaggart Scott will be entitled to invoice for 20% of the Price upon acceptance of Contract. The remaining balance of the Price will be invoiced due upon delivery of the Deliverables.

7.4 Where the Contract Price exceeds £50,000, MacTaggart Scott may require payment via an irrevocable letter of credit representing an agreed percentage of the total Contract Price. Such letter of credit shall be opened within thirty (30) days of Contract. All costs associated with implementation of the letter of credit will be borne by the Buyer.

7.5 MacTaggart Scott may elect, at their sole discretion, for invoice milestone payments and such payments shall be outlined within the quotation.

7.6 If the Buyer fails to make payment of any sum due under the Contract on the due date, MacTaggart Scott shall be entitled but not bound (in addition and without prejudice to all other claims, rights or remedies which MacTaggart Scott may have against the Buyer) to either:

7.6.1 withhold performance of its obligations under the Contract, without liability to the Buyer, pending such payment; or

7.6.2 terminate the Contract in accordance with Clause 5.1.

8. **DELIVERY**

8.1 Unless otherwise agreed and stated on the face hereof, all deliveries will be made FCA MacTaggart Scott Loanhead (Incoterms 2020), and will be deemed to have been effected when MacTaggart

Scott notify the Buyer the Deliverables are ready for collection.

8.2 Any periods quoted for delivery or dispatch are estimates only and time for delivery shall not be made of the essence by notice. MacTaggart Scott will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in delivery of the Deliverables (even if caused by MacTaggart Scott's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract.

8.3 If for any reason the Buyer will not accept delivery of the Deliverables, or MacTaggart Scott is unable to deliver the Deliverables because the Buyer has not provided appropriate instructions, documents, licenses or authorisations:

8.3.1 risk in the Deliverables will pass to the Buyer (including for loss or damage caused by the Buyer's negligence);

8.3.2 the Deliverables will be deemed to have been delivered; and

8.3.3 MacTaggart Scott may store the Deliverables until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

8.4 Delivery of the Deliverables, as set out in the Order, to either a carrier for transmission to the Buyer or the delivery of the Deliverables to the place of delivery will constitute delivery to the Buyer and the risk therein will upon such delivery pass to the Buyer. Section 32(2) and (3) of the Sale of Goods Act 1979 will not apply.

8.5 MacTaggart Scott will be entitled to make partial deliveries or deliveries by instalments and these Conditions will apply to each partial delivery.

8.6 Where the Deliverables are ready but cannot be dispatched for any reason beyond the control of MacTaggart Scott or through the fault or delay of the Buyer, MacTaggart Scott will be entitled to make a reasonable charge in respect of storage and insurance of the Deliverables.

8.7 The quantity of any consignment of Deliverables as recorded by MacTaggart Scott upon dispatch from MacTaggart Scott's place of business will be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

8.8 MacTaggart Scott will not be liable for any non delivery of Deliverables (even if caused by MacTaggart Scott's negligence) unless written notice is given to MacTaggart Scott within three (3) days of the date when the Deliverables would in the ordinary course of events have been delivered.

8.9 Any liability of MacTaggart Scott for non delivery of the Deliverables will be limited to the following options (at MacTaggart Scott's sole discretion):

8.9.1 replacing the Deliverables within a reasonable time; or

8.9.2 issuing a credit note at the Contract rates on a pro-rata basis against any invoice raised for such Deliverables.

8.10 Where the place of supply of the Deliverables is not at MacTaggart Scott's premises, the Buyer will notify MacTaggart Scott in writing in good time beforehand of all regulations that apply to any representatives of MacTaggart Scott because they will be attending at any premises where the Deliverables are to be performed. The Buyer will also provide to MacTaggart Scott all accommodation, services, amenities, facilities, utilities and equipment reasonably requested by MacTaggart Scott for the purposes of supplying the Deliverables.

8.11 Unless MacTaggart Scott has agreed otherwise in writing, the delivery date and any time or period agreed for performance of the Deliverables are estimates only made in good faith and MacTaggart Scott will not be liable for the consequences of any delay and time of delivery or performance by MacTaggart Scott will not be of the essence of the Contract. MacTaggart Scott will use its reasonable endeavours to meet any estimated date or agreed period for completion of the Deliverables.

9. **TITLE AND RISK**

9.1 Risk in the Deliverables will pass to the Buyer in accordance with the Incoterms 2020 stated on the quotation, subject to Clause 8.3.

9.2 Title of the Deliverables will not pass to the Buyer until MacTaggart Scott has received in full all sums due to it in respect of:

9.2.1 the Deliverables; and

9.2.2 all other sums which are or which become due to MacTaggart Scott from the Buyer on any account.

9.3 Until title of the Deliverables has passed to the Buyer, the Buyer will:

9.3.1 hold the Deliverables on a fiduciary basis as MacTaggart Scott's bailee;

9.3.2 store the Deliverables (at no cost to MacTaggart Scott) separately from all other Deliverables of the Buyer or any third party in such a way that they remain readily identifiable as MacTaggart Scott's property;

9.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Deliverables; and

9.3.4 maintain the Deliverables in satisfactory condition and keep them insured on MacTaggart Scott's behalf for their full Price against all risks to the reasonable satisfaction of MacTaggart Scott. On request the Buyer will produce the policy of insurance to MacTaggart Scott.

9.3.5 The proceeds of the insurance referred to in Clause 9.3.4 on trust for MacTaggart Scott and not mix them with any other money nor pay the proceeds into an overdrawn bank account.

9.4 While title in the Deliverables remains in MacTaggart Scott, MacTaggart Scott will have the right without prejudice to the obligation of the Buyer

to purchase the Deliverables or to retake possession of the Deliverables.

9.5 MacTaggart Scott will have the right to maintain an action for the Price to be paid notwithstanding that title in the Deliverables not having passed to the Buyer.

9.6 Until title of the Deliverables passes to the Buyer, the Buyer grants MacTaggart Scott, its agents and employees an irrevocable licence at any time to enter any premises where the Deliverables are or may be stored in order to repossess them pursuant to Clause 9.4 or inspect them.

9.7 The Buyer may re-sell the Deliverables before ownership has passed to it solely on the following Conditions:

9.7.1 any sale will be effected in the ordinary course of the Buyer's business at full market value; and

9.7.2 any such sale will be a sale of MacTaggart Scott's property on the Buyer's own behalf and the Buyer shall deal as principal in making such a sale.

9.8 The Buyer's right to possession of the Deliverables will terminate immediately if:

9.8.1 the Buyer is the subject of a petition for sequestration or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act or other statutory or regulatory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory, except a solvent voluntary liquidation for the purposes only of reconstruction or amalgamations) or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

9.8.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under the Contract or any other Contract between MacTaggart Scott and the Buyer or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (as amended) or the Buyer ceases to trade; or

9.8.3 the Buyer encumbers or in any way changes any of the Deliverables.

9.9 On termination of the Contract, howsoever caused, MacTaggart Scott's (but not the Buyer's) rights contained in this Clause 9 will remain in effect.

10. **TRANSIT**

10.1 Claims for damages to Deliverables occurring in transit or for storage in delivery or Deliverables received from carriers will be considered by MacTaggart Scott only if the carriers and MacTaggart Scott receive written notification of such damages or shortage within seven (7) days of arrival or in the event of loss of Deliverables in transit within twenty-one (21) days of the date of consignment. Where delivery is taken of Deliverables without being checked they will be deemed to have been accepted by the Buyer unless the carrier's delivery book is signed "Not Examined".

11. **INSPECTION**

11.1 Unless otherwise agreed in writing, MacTaggart Scott will carry out such tests and inspections as it usually carries out on such Deliverables. Any additional tests or inspections required by the Buyer will be to the Buyer's account.

11.2 The Deliverables shall be manufactured and released in accordance with the relevant requirements of such public or responsible body or bodies in the United Kingdom to whose jurisdiction, control or regulations the Deliverables may from time-to-time be subject and in addition such Deliverables as are manufactured by MacTaggart Scott under its own system of inspection as approved by any such body and such inspection and release will constitute acceptance by the Buyer of all the Deliverables.

12. **INTELLECTUAL PROPERTY RIGHTS ("IPR")**

12.1 All IPR in the Deliverables (including without limitation any and all patent rights, design rights, copyrights and other IPR (whether registered or unregistered) in the specification(s) and design(s) of the Deliverables) will, as between MacTaggart Scott and the Buyer, be the property of MacTaggart Scott.

12.2 If the Buyer provides any design(s), specification(s) and/or instructions (or any part thereof) the Buyer represents and warrants that the use of any design(s), specification(s) and/or instruction(s) (or any part thereof) provided directly or indirectly by the Buyer will not infringe any rights of any third party. The Buyer hereby waives any and all moral rights (and/or equivalent or similar rights the Buyer may have in any jurisdiction insofar as it is competent for the Buyer to do so) in the IPR. The Buyer will indemnify and hold harmless MacTaggart Scott against any and all claims alleging infringement of trademarks, trade names, patents, copyrights, designs, registered designs and/or any other IPR (including without limitation any "passing off" claims) which arise as a result of MacTaggart Scott's compliance with the Buyer's specification(s), design(s) and/or instruction(s) (or any part thereof).

12.3 The Buyer will notify MacTaggart Scott forthwith of any claim(s) that the sale, use or other exercise of the Deliverables infringes any IPR and give to MacTaggart Scott all authority and Information and every reasonable assistance required by MacTaggart Scott for the defence of any such claim(s) and will not itself admit, handle, deal with or compromise any such claim(s) except with the written consent of MacTaggart Scott.

12.4 The Buyer will comply with all instructions of MacTaggart Scott and all legislation in relation to the sale, processing, storage and use of the Deliverables. MacTaggart Scott may without liability

cancel or suspend any deliveries or manufacture of any of the Deliverables which have become the subject of a claim by a third party alleging infringement of any IPR.

12.5 Other than for the purposes of the Contract, MacTaggart Scott does not grant the Buyer or any other third party any licence, express or implied, under any IPR of MacTaggart Scott for the Deliverables or any product, process, design or machine of which the Deliverables form part, nor does the sale of the Deliverables or supply of supporting Information imply, represent or warrant that the Deliverables do not infringe the rights (including without limitation the IPR) of a (or any) third party (and for the avoidance of doubt no indemnity is given by MacTaggart Scott in relation to any such infringement(s) or alleged infringement(s)).

13. **INFORMATION**

13.1 All drawings, descriptions, specifications, designs, documents and other Information (including without limitation features contained in any of the foregoing or in any objects or software), whether business or technical, (together "Information") supplied or otherwise disclosed by MacTaggart Scott are supplied or disclosed on the express understanding that such supply or disclosure will not be construed as passing to the Buyer any copyright (or any other rights whatsoever) in such Information. All rights including, without limitation, copyright and property in all such Information will, as between MacTaggart Scott and the Buyer, remain vested in MacTaggart Scott.

14. **TERMINATION**

14.1 Upon the termination of the Contract, all rights in and to the Deliverables (unless such Deliverables have been sold to the Buyer and have been fully paid for by the Buyer) will automatically revert to MacTaggart Scott. MacTaggart Scott will have the right to enter any premises to take immediate possession of the Deliverables without further notice or demand and the Buyer will immediately inform MacTaggart Scott of the location of the Deliverables.

14.2 MacTaggart Scott will have the right by giving ten (10) days written notice to the Buyer to terminate all or any part of the Deliverables or the Contract at such time or times as MacTaggart Scott may consider necessary to suit their convenience.

14.3 MacTaggart Scott will be entitled but not bound to terminate the Contract with immediate effect and without liability to the Buyer by giving written notice to that effect to the Buyer and such termination shall be in addition to and without prejudice to other claims, rights and remedies which MacTaggart Scott may have against the Buyer in relation to the Contract or for any breach of Contract, if:

14.3.1 the Buyer fails to make any payment due by it to MacTaggart Scott under the Contract on the due date or breaches any other obligation under the Contract; or

14.3.2 the Buyer becomes bankrupt or insolvent, makes an arrangement with its creditors, has a receiver or administrator appointed over it, has distress and execution levied in respect of any of its assets or commences to be wound-up (not being a member's voluntary winding-up for the purpose of amalgamation or reconstruction); or

14.3.3 any steps are taken to put the Buyer in administration pursuant to Schedule B1 of the Insolvency Act 1986 or an administrator is appointed to the Buyer; or

14.3.4 a judicial factor is appointed to the Buyer or a receiver is appointed over all or any part of its assets; or

14.3.5 the Buyer is sequestrated or grants a trust deed for behalf of its creditors or makes or seeks to make any arrangement or compromise with its creditors generally; or

14.3.6 the Buyer is subject to any formal or informal insolvency proceedings under any jurisdiction or anything analogous to any of the matters referred to in Clauses 14.3.2 to 14.3.5 happens in relation to the Buyer in any jurisdiction; or

14.3.7 the Buyer becomes in the reasonable opinion of MacTaggart Scott unable to pay its debts as they fall due or properly fulfil its obligations under the Contract or ceases or threatens to cease carrying on business; or

14.3.8 the Buyer fails to provide an End User/Consignee Undertaking, or MacTaggart Scott loses or fails to secure an Export License from the UK Government, in accordance with Clause 23.1.3. The Buyer will be liable to pay MacTaggart Scott all costs incurred at the time of termination as to compensate MacTaggart Scott for work completed in pursuance of the provision of the Deliverables, including any binding commitments entered into in the proper execution of the Contract; or

14.3.9 the Buyer assigns the Contract, or any part of it, without the prior written consent of MacTaggart Scott.

14.4 This Clause 14 shall be without prejudice to any other rights or remedies that MacTaggart Scott may have under the Contract or at law. The termination of the Contract howsoever arising shall not relieve the Buyer of any liability (including liability for payment) incurred prior to termination, and upon such termination the Buyer will settle such liabilities.

15. **WARRANTY**

15.1 MacTaggart Scott shall at its option either replace or repair or issue credit for the Price to the Buyer for any Deliverables found to be defective by sole reason of faulty design (to the extent parts are manufactured to MacTaggart Scott detailed design), materials or poor workmanship (fair wear and tear excluded) within six (6) months from the date of delivery or within sixty (60) hours of use (whichever will first expire) provided that:

15.1.1 MacTaggart Scott is notified in writing within seven (7) days of the discovery of any such defects by the Buyer and the defective Deliverables are returned to MacTaggart Scott, transportation charges being prepaid by the Buyer;

15.1.2 examination by MacTaggart Scott of such Deliverables shall establish to its satisfaction that such defects exist and have not been caused by misuse, neglect, improper installation or repair, alteration or accident, inadequate storage;

15.1.3 this warranty will not extend to any products or parts thereof not manufactured by MacTaggart Scott. In the case of products not manufactured by MacTaggart Scott, MacTaggart Scott shall so far as possible pass to the Buyer the benefit of any warranty or guarantee given to MacTaggart Scott by the manufacturers.

15.2 If MacTaggart Scott complies with Clause 15.1, it shall have no further liability for a breach of the warranty in Clause 15.1 in respect of such Deliverables.

15.3 In the case of a consumer transaction as defined in the Consumer Transactions (Restrictions on Statements) Order 1976 (as amended) this Condition shall not affect the statutory rights of the Buyer.

15.4 The property in any Deliverables or any part of them that are returned to MacTaggart Scott by the Buyer and for which a refund or replacement is provided in terms of Clause 15.1 will belong to MacTaggart Scott.

15.5 Where any Deliverables supplied by MacTaggart Scott pursuant to the Contract are used or second-hand serviceable Deliverables, the applicable warranty period will be the warranty period provided in Clause 15.1, unless another, different warranty period for them is specified in writing in the Order Acknowledgement.

15.6 Other than as provided in Clause 15, no warranty is given with respect to any Information or services provided by MacTaggart Scott save where expressly agreed in writing.

15.7 So far as permitted by law, MacTaggart Scott's liability under the provisions of this Clause 15 is limited as follows:

15.7.1 MacTaggart Scott will not be liable for breach of the warranties unless the Buyer has notified MacTaggart Scott promptly in writing within the relevant warranty period that a breach has occurred in accordance with Clause 15.1.1;

15.7.2 MacTaggart Scott will not be liable if the Buyer makes any further use of such Deliverables after giving notice in accordance with Clause 15.1.1;

15.7.3 MacTaggart Scott will not be liable for any defects in the Deliverables, unless the Deliverables to which the claim relates are promptly returned to the delivery address, by prior arrangement with MacTaggart Scott in accordance with Clause 15.1.1;

15.7.4 MacTaggart Scott will not be liable if the Deliverables are resold in anything other than their original packaging;

15.7.5 MacTaggart Scott will not be liable in respect of any defect in the Deliverables arising from fair wear and tear; abnormal working or storage conditions; wilful damage or misuse; negligence on the Buyer's part; or alteration or repair of the Deliverables without MacTaggart Scott's prior approval in writing;

15.7.6 MacTaggart Scott will not be liable if the defect arises because the Buyer failed to follow MacTaggart Scott's or the Deliverables' manufacturer's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Deliverables or (if there are none) good trade practice;

15.7.7 MacTaggart Scott will not be liable to the Buyer if any of the Deliverables are manufactured or supplied by third parties. In the case of such Deliverables MacTaggart Scott shall use its reasonable endeavours to procure for the Buyer's benefit such warranty or guarantee (if any) as may have been provided to MacTaggart Scott by any such third party;

15.7.8 MacTaggart Scott will not be liable to the Buyer if any defect in the Deliverables arises from any drawing, design or specification supplied by the Buyer;

15.7.9 MacTaggart Scott will not be liable if the Buyer alters or repairs such Deliverables without the written consent of MacTaggart Scott; and

15.7.10 MacTaggart Scott will not be responsible for removal or reinstallation costs or any charges relating to dismantling or reassembling any of the Deliverables and any charges in this connection will be paid for by the Buyer.

16. **LIABILITY AND INDEMNITY**

16.1 Subject to Clause 15, the following provisions set out the entire financial liability of MacTaggart Scott (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:

16.1.1 any breach of the Contract;

16.1.2 any use made or resale by the Buyer of any of the Deliverables, or of any product incorporating any of the Deliverables; and

16.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

16.2 Save as expressly provided in these Conditions, all Conditions, warranties and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

16.3 Subject to Clause 16.2 and 16.4:

16.3.1 MacTaggart Scott's total liability in Contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price; and

16.3.2 notwithstanding any other clause within this Contract MacTaggart Scott's total liability in Contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or

otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price; and MacTaggart Scott shall not be liable for any:

(i) loss of profit;

(ii) loss of business;

(iii) depletion of goodwill and/or similar losses;

(iv) loss of anticipated savings;

(v) loss of Contract;

(vi) loss of use;

(vii) loss or corruption of data or Information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses whatsoever (howsoever caused) which arise out of or in connection with the Contract.

(viii) removal or reinstallation costs or any charges relating to dismantling or reassembling any of the Deliverables and any charges in this connection will be paid by the Buyer.

16.4 Except where the Contract is an international supply Contract within Section 26 of the Unfair Contract Terms Act 1977 (the "Act") nothing contained in these Conditions shall exclude or restrict:

16.4.1 any liability of MacTaggart Scott for death or personal injury (as defined in the Act) resulting from negligence (as defined in the Act);

16.4.2 any liability of MacTaggart Scott for fraud or fraudulent misrepresentation;

16.4.3 any liability of MacTaggart Scott for breach of the implied undertakings as to title contained in Section 12 of the Sale of Goods Act 1979 (as amended); and

16.4.4 where the Buyer deals as a consumer within the meaning of the Act, any liability of MacTaggart Scott for breach of its implied undertakings as to conformity of the Deliverables with description or sample or as to their quality or fitness for a particular purpose contained in Sections 13, 14 and 15 of the Sale of Goods Act 1979 (as amended).

16.5 The Buyer will be responsible for and will save, indemnify, defend and hold harmless MacTaggart Scott from and against all claims, costs, demands, expenses and liabilities of whatever nature (including legal costs and expenses) made by third parties and caused in whole or in part by, or arising out of, any act or omission of the Buyer, their employees or agents in connection with the Deliverables, in respect of:

16.5.1 loss of or damage to property of the Buyer, including but not limited to the Deliverables after delivery, whether owned, hired, leased or otherwise provided by the Buyer arising from, relating to or in connection with the Contract;

16.5.2 any claim for personal injury or death or loss or damage directly or indirectly occasioned by default (including non-compliance with any statutory or other obligation in relation to the Deliverables), failure to follow MacTaggart Scott's instructions (whether oral or written), or misuse or mal-operation of the Deliverables by or on the part of the Buyer or on the part of any person or persons other than on behalf of MacTaggart Scott;

16.5.3 personal injury, including death or disease, affecting any person who is an employee of the Buyer arising from, relating to or in connection with the Contract;

16.5.4 any designs, drawings or specifications given to MacTaggart Scott by the Buyer in respect of the Deliverables;

16.5.5 any materials or products supplied by the Buyer to MacTaggart Scott and incorporated or used by MacTaggart Scott in the supply or performance of the Deliverables;

16.5.6 the improper incorporation, assembly, use, processing, storage or handling of the Deliverables by the Buyer.

16.5.7 this indemnity will continue in force even if the Contract is terminated.

17. **FORCE MAJEURE**

17.1 MacTaggart Scott will not be liable for delay in performance or for non-performance in whole or in part of its obligations under the Contract directly or indirectly resulting from causes beyond the control either of MacTaggart Scott or of MacTaggart Scott's suppliers including, but not limited to, acts of God, acts of the Buyer or a third party, hostilities, embargoes, sabotage, civil disturbance, government regulations, strikes, lock-outs or other industrial action, illness, epidemics, pandemics, flood, fire, impact, explosion, adverse weather, delay in delivery to MacTaggart Scott or MacTaggart Scott's suppliers or shortage of any services, products or materials.

17.2 In any such event MacTaggart Scott may without liability extend the time for performing the Contract, cancel the Contract or reduce the volume of the Deliverables ordered by the Buyer. If the Contract is frustrated or cancelled as a result of an event set out in Clause 17.1 MacTaggart Scott will be entitled to such reasonable remuneration as it may specify.

18. **BREACH AND FINANCIAL CONDITIONS**

18.1 If any of the Buyer's obligations to MacTaggart Scott under any Contract are not fulfilled or if the Buyer's financial condition at any time does not in MacTaggart Scott's unfettered judgement justify continuance of the Contract on the terms of payment specified, MacTaggart Scott can, without prejudice to any other rights it may have, by notice in writing cancel any outstanding Order or suspend any deliveries of our work on any of the Deliverables unless the Buyer makes such payment for any of the Deliverables ordered as MacTaggart Scott may require.

18.2 In addition to any rights of lien to which MacTaggart Scott may by law be entitled, while any amount remains due to it from the Buyer, MacTaggart Scott will be entitled to a general lien for

such amount on all property of the Buyer in MacTaggart Scott's possession (whether paid for by the Buyer or not).

19. **HEALTH AND SAFETY AT WORK ETC ACT 1974**

19.1 If the Deliverables are articles for use at work within the meaning of the Health and Safety at Work etc. Act 1974, the Buyer hereby agrees that it is responsible for taking all necessary steps to ensure that the Deliverables are safe and without risks to health when properly used including:

19.1.1 regular and properly testing, inspecting and maintaining, properly installing, storing and housing the Deliverables;

19.1.2 disseminating adequate detailed Information regarding their sale and proper use to the persons using the Deliverables, and ensuring that the Deliverables are adequately manned, and the Buyer's Order for the Deliverables will be deemed to be its written undertaking therefore pursuant to the said Act.

20. **BUYER'S PROPERTY**

20.1 Any property of the Buyer received by MacTaggart Scott whether for incorporation in Deliverables of MacTaggart Scott or for repair or otherwise will be held by MacTaggart Scott at the Buyer's risk as regards loss or damage howsoever arising (whether due to MacTaggart Scott's negligence or otherwise).

20.2 The Buyer will also accept liability in cases where quantity, quality or delay in delivery of free issue items prejudices MacTaggart Scott's performance of the Contract.

20.3 Any property of the Buyer received by MacTaggart Scott whether for incorporation in Deliverables of MacTaggart Scott or for repair or otherwise must be:

20.3.1 Packaged safely and crates must never be nailed shut. In the interests of Health and Safety, MacTaggart Scott may be obliged to reject and return any consignment to the Buyer if the packaging is deemed to be unsafe.

20.3.2 Accompanied with appropriate documentation clearly stating the applicable Contract and/or Order number, the relevant Part Numbers and any other relevant reference(s).

21. **PROPER LAW AND JURISDICTION**

21.1 The Contract will be governed by and construed in accordance with Scots law and the Courts of the United Kingdom will have exclusive jurisdiction to hear all disputes arising in connection with the Contract.

22. **CONFIDENTIALITY**

22.1 Any Information or data given in confidence, including Information (as defined in Clause 13), or any confidential drawings or other general commercial intelligence which may be received by the Buyer or any representatives of the Buyer (insofar as it is not demonstrably public knowledge) will be kept confidential and accordingly the Buyer will not disclose any of that Confidential Information to any third party. The Buyer will not use any Confidential Information that they receive from MacTaggart Scott for any purpose other than in connection with the Deliverables supplied hereunder. The Buyer will only disclose such Confidential Information to those persons within their organisation who have a need to know and to such extent as is necessary for the purpose of the Contract.

22.2 In the event that the Buyer or any such representative so divulges any such Confidential Information to the detriment of MacTaggart Scott, the Buyer will indemnify MacTaggart Scott in full against all costs, expenses, damage or loss directly or indirectly occasioned thereby.

23. **EXPORTS**

23.1 In the case of Deliverables, Software or Technology to be delivered to a location outside of the United Kingdom, the following additional Conditions will apply:

23.1.1 all MacTaggart Scott products are considered to be Military Goods as defined by the United Kingdom Strategic Export Control List, and are subject to United Kingdom Government Export Licence restrictions.

23.1.2 it is the Buyer's obligation to provide MacTaggart Scott with End User/Consignee Undertaking in accordance with the United Kingdom Department of International Trade guidelines.

23.1.3 failure to provide a compliant End User/Consignee Undertaking or in the event that the United Kingdom Government declines to grant an export licence or revokes an extant one in place at the time this Contract was agreed, MacTaggart Scott has the right to terminate the Contract in accordance with Clause 14.3.8.

23.1.4 any delays in the supply of the End User/Consignee Undertaking can have a follow-on effect to the issuing of an export licence if required and an enforced delay out with MacTaggart Scott's control in the supply of the product.

23.1.5 any Buyer located within the United Kingdom who wishes to export any MacTaggart Scott products will be required to obtain an export licence from the United Kingdom Government Department for International Trade for that product.

23.2 Any Order that conflicts with the Export Control Order 2008, and any revisions thereto, will in no event be binding upon MacTaggart Scott.

23.3 It is the Buyer's responsibility to comply with applicable export control regulations and comply with any restrictions in MacTaggart Scott's export licence for Deliverables shipped from and to the United Kingdom. The Buyer will be responsible for and will save, indemnify, defend and hold harmless MacTaggart Scott from and against all Claims in connection with any failure by the Buyer to comply

with applicable export control regulations or MacTaggart Scott's export licence arising from, relating to or in connection with the Contract.

24. **SEVERANCE**

24.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable, or unreasonable it will to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remained of such provision will continue in full force and effect.

25. **WAIVER**

25.1 Failure or delay by MacTaggart Scott in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract. Any waiver by MacTaggart Scott of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other Conditions of the Contract.

26. **THIRD PARTIES AND UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS**

26.1 The parties to the Contract do not intend that any Conditions of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it. The provisions of the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

27. **ASSIGNMENT**

27.1 MacTaggart Scott may assign the Contract or any part of it to any person, firm or company. The Buyer will not be entitled to assign the Contract or any part of it without the prior written consent of MacTaggart Scott.

28. **SURVIVAL**

28.1 The following Clauses will survive termination of the Contract (howsoever arising):

1. Definitions
9. Title and Risk
13. Information
14. Termination
15. Warranty
16. Liability and Indemnity
22. Confidentiality

29. **NOTICES**

29.1 Any notice or document to be served under this Contract may be delivered or sent by pre-paid first-class or recorded delivery or (if the notice is to be served by post outside the country from which it is sent) sent by airmail requiring signature on delivery. It will be delivered to the relevant party's address set out in the Order or to such other address as may from time-to-time be notified by one party to the other.

29.2 Any notice or communication will be deemed to have been received two (2) business days after posting it from and to an address in the United Kingdom and seven (7) business days from the date of posting it from or to an address elsewhere.

29.3 Unless otherwise agreed, all notices and correspondence under or in respect of the Order will be in the English language.

30. **NO SET-OFF**

30.1 The Buyer will not be entitled under any circumstances whatsoever to set-off or counter-claim against or deduct, discount or withhold from any sum from time-to-time due by it to MacTaggart Scott. Any sums due by the Buyer will be paid without deduction, compensation, set-off or similar whatsoever.