



PREMIER MACHINE TOOLS

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. Interpretation

1.1 In these Conditions, the following rules apply:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended, re-enacted or superseded and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (c) a reference to "writing" or "written" includes emails; and
- (d) capitalised terms shall have the meaning set out in Condition 20.

2. Basis of contract

2.1 **THESE CONDITIONS APPLY TO THE CONTRACT TO THE EXCLUSION OF ANY OTHER TERMS THAT THE CUSTOMER SEEKS TO IMPOSE OR INCORPORATE, OR WHICH ARE IMPLIED BY TRADE, CUSTOM, PRACTICE OR COURSE OF DEALING.**

2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Goods Specification and/or Service Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when PMT provides Confirmation of the Order. Orders are binding on PMT only to the extent set out in the Confirmation of the Order and from the date and time set out in the Confirmation of the Order ("**Commencement Date**").

2.4 Once the Contract comes into existence, the Customer shall not cancel or vary the Order without PMT's express written consent. PMT reserves the right to charge the Customer reasonable cancellation charges, including any unrecovered costs and / or damages associated with orders made by PMT to third party suppliers in connection with fulfilment of the order, and/or a restocking fee of 10%, or to retain any deposit paid in accordance with the Order, in the event of any such cancellation.

2.5 Any samples, drawings, descriptive matter, or advertising produced by PMT and any descriptions or illustrations contained in PMT's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force. No representations or warranties are given or implied in respect of such samples, drawings, descriptions, illustrations or other advertising produced by PMT.

2.6 Any quotation given by PMT shall not constitute an offer. A quotation can no longer be considered relevant after a period of 30 days from its date of issue.

2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document that is inconsistent with these Conditions.

3. **Goods and Services**

Goods

- 3.1 The Goods are described in the Goods Specification set out or identified in the Order.
- 3.2 PMT reserves the right to amend the specification of the Goods and any applicable Goods Specification if required by any applicable statutory or regulatory requirements.

Services

- 3.3 The Services are described in the Service Specification set out or identified in the Order.
- 3.4 PMT reserves the right to amend the specification of the Services and any applicable Services Specification if required by any applicable statutory or regulatory requirements.

4. **Delivery of the Goods**

Delivery

- 4.1 PMT shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

- 4.2 If the Confirmation does not specify a Delivery Location:

- (a) the Customer shall collect the Goods from PMT's premises at the Delivery Location, or such other location as may be advised by PMT prior to delivery, within three Business Days of PMT notifying the Customer that the Goods are ready; and
- (b) delivery of the Goods in such case shall take place on the completion of loading of the Goods at the Delivery Location, or such other location as may be advised by PMT prior to delivery.

- 4.3 Where specified in the Order that PMT shall undertake delivery of the Goods:

- (a) PMT shall deliver the Goods to the Delivery Location set out in the Order, or such other location as the parties may agree, at any time after PMT notifies the Customer that the Goods are ready;
- (b) the Customer shall provide all necessary delivery instructions, permissions and access to enable the Goods to be safely unloaded at the Delivery Location set out in the Order, or such other location as the parties may agree, and shall ensure that each delivery of Goods is signed for by an authorised representative; and
- (c) delivery of the Goods in such case shall be completed on the Goods' arrival at the Delivery Location set out in the Order, or such other location as the parties may agree.

Cancellation of Contract

- 4.4 In the event that PMT, after accepting the Customer's Order in accordance with Condition 2.3, elects to cancel the Contract, PMT's liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

Delay to Delivery

- 4.5 If PMT anticipates that it will not be able to deliver the Goods at time of delivery set out in the Confirmation of the Order ("**Delay**"), it shall notify the Customer in writing, stating the reason and, if possible, the time when delivery can be expected. The Customer shall be entitled to choose whether part deliveries of the Goods shall be made in case of Delay of part of the delivery. PMT shall thus in its notification to the Customer specify which Goods (or part thereof) that can be delivered on time.
- 4.6 In the event of a Delay, PMT shall have 2 weeks as from the delivery date specified in the Confirmation of the Order to remedy the Delay by providing an alternative solution such as supplying new Goods or substitute Goods, at PMT's discretion. If PMT does not remedy the Delay within such period of time, the Customer may, subject to the remaining paragraphs of this Condition 4, claim liquidated damages by notifying PMT in writing, provided that the Customer is not responsible for the specific reason for the Delay.
- 4.7 The maximum amount of liquidated damages payable by PMT shall for each full week of Delay be 0.5% of the Price referable to the Goods that have been Delayed or cannot be used as a consequence of the Delay. The liquidated damages shall not, however, exceed 7.5%¹ of the Price (the "**Liquidated Damages Cap**"). The Customer shall forfeit its right to any liquidated damages for Delay if it has not lodged a claim in writing for such damages within six months after the time when delivery should have taken place.
- 4.8 When the Liquidated Damages Cap is reached, the Customer is entitled to demand delivery of the Goods so delayed within a final, reasonable period (not less than one week). If delivery does not take place within such final period the Customer is entitled to terminate the Contract in respect of such part of the Goods that were subject for the Delay, or any part thereof.
- 4.9 If the Customer terminates the Contract in accordance with Condition 4.8, it shall be entitled to compensation for the actual, direct and proven loss it suffers as a result of the PMT's Delay. The total compensation, including the liquidated damages which are payable under Condition 4.7, shall not exceed 15% of that part of the Price which is attributable to the part of the Goods in respect of which the Contract is terminated. The Customer shall use all reasonable efforts to mitigate any costs, losses and damages arising as a result of any Delay.
- 4.10 Liquidated damages and any right of termination of the Contract specified in this Condition 4 shall be the Customer's exclusive remedy for a Delay. All other claims against PMT based on such Delay shall be excluded, except where PMT has been guilty of gross negligence.
- 4.11 PMT 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 PMT with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

Failure to Take Delivery

- 4.12 If, when PMT has attempted to deliver the Goods to the Delivery Location between the hours of 9 am and 5pm on any Business Day, or otherwise at any time agreed between the parties, the Customer fails to take delivery of the Goods at such time, or if, in the case of Goods to be delivered at PMT's premises, the Customer fails to take delivery of the Goods within three Business Days of PMT notifying the Customer that the Goods are ready for collection, or in any case if PMT is unable to deliver the Goods due to the Customer's breach of condition 4.3, then, except where such failure or inability is caused by a Force Majeure Event or PMT's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 09:00 on the third Business Day after the day on which PMT notified the Customer that the Goods were ready for collection or delivery (as applicable); and

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

4.13 If 10 Business Days after the day on which PMT notified the Customer that the Goods were ready for delivery the Customer has not taken or, as applicable, accepted delivery of them, PMT may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

Delivery by Instalment

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

5. **Quality of the Goods and Liability for Defects**

5.1 PMT warrants², subject to the Warranty Conditions, that on delivery, and throughout the Warranty Period, the Goods shall conform to the agreed Goods Specification, be free from material defects, be of the quantity and description specified in the Order (as acknowledged by PMT in the Confirmation of the Order) for a period of twelve (12) months from the delivery date (the "**Warranty Period**").

5.2 For the purposes of these Conditions and subject always to the Warranty Conditions, the Goods shall be considered defective if they are not in compliance with the above warranty at condition 5.1 ("**Liability for defects**").

5.3 Save where otherwise warranted under these Conditions, PMT disclaims any warranties related to any goods, services or information, whether express, implied, statutory or otherwise, including without limitation any implied warranties of merchantability, non-infringement or fitness for a particular purpose.

5.4 PMT shall not be liable:

- (a) for any defects arising out of materials provided or a drawing or design stipulated or specified by the Customer in the Goods Specification or otherwise;
- (b) for any defects arising as a result of failure to (i) follow PMT's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods; (ii) properly use the Goods; or (iii) follow good trade practice regarding the same;
- (c) if the Customer makes any further use of such Goods after giving notice in accordance with Condition 5.6;
- (d) for incorrect installation or faulty repair by the Customer or the Customer alters or repairs such Goods without the written consent of PMT;
- (e) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 PMT's liability shall be limited to defects which appear within a period of one year from delivery. If the use of the Goods exceeds that which is agreed, this period shall be reduced proportionately.

- 5.6 The Customer shall without undue delay and in any case, within 30 days of the defect becoming evidence, notify PMT in writing of the defect's existence. Failure to notify PMT within the specified time period shall be considered acceptance by the Customer of the defect.
- 5.7 Subject to the satisfaction of the Warranty Conditions, if:
- (a) PMT receives written notice of the defect from the Customer in accordance with condition 5.6,
 - (b) PMT is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by PMT) returns any components which are subject to a warranty claim to PMT's place of business at the Customer's cost,
- PMT shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.8 To the extent PMT elects to make any repairs of defective Goods, PMT will carry out the repairs at the place where the Goods are located, except where it deems (in its sole discretion) it appropriate to do so elsewhere. Unless otherwise agreed, the Customer bears any additional cost reasonably incurred by PMT in repairing the Goods at a location other than the place of delivery.
- 5.9 Where PMT fails to comply with its obligations to reply to a written notice of defect from the Customer within a reasonable period, which shall not be less than one week, the Customer may undertake or employ a third party to undertake the repairs at the cost and risk of PMT. Where the repairs are carried out by the Customer or a third party, PMT shall reimburse reasonable and properly vouched costs incurred by the Customer. Such reimbursement shall be deemed full settlement of PMT's liabilities for the defect.
- 5.10 Where the Goods are not successfully repaired, the Customer is entitled to a reduction of the Price proportionate to the reduced value of the Goods.
- 5.11 Where the defect is sufficient to fully deprive the Customer of the benefit of the Goods or a part of it, the Customer may terminate the Contract by written notice to PMT. The Customer shall then be entitled to full refund of any amount of the Price already paid to PMT and it shall be entitled to compensation for the actual, direct and proven loss it suffers as a result of the defect up to 15% of that part of the Price which is attributable to the part of the Goods in respect of which the Contract is terminated. The Customer shall use all reasonable efforts to mitigate any costs, losses and damages arising as a result of any Delay.
- 5.12 In respect of any component replaced under warranty in accordance with Condition 5.7, PMT's warranty at Condition 5.1 will apply for a Warranty Period continuing, in respect of that component only, until the later of:
- (a) the expiry of the Warranty Period for the Goods into which the component is fitted; and
 - (b) six months commencing on the date of delivery in respect of relevant component.
- 5.13 These Conditions shall apply to any repaired or replacement Goods supplied by PMT.
- 5.14 Except as provided in this condition 5, PMT shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in condition 5.1 or otherwise in respect of any defects in the Goods (or any part thereof). This limitation of PMT's liability shall not apply if PMT has been guilty of gross negligence.
- 5.15 The terms implied by sections 13 to 15 of the Sale of Goods Act 1893 or the Supply of Goods and Services Act 1980 (or any equivalent or replacement legislation) are, to the fullest extent permitted by law, excluded from the Contract.

5.16 To the fullest extent permitted by law, except for any warranties expressly set forth in these conditions, PMT hereby disclaims any and all warranties related to any Goods, Services or information, whether express, implied or otherwise, including without limitation any implied warranties of merchantability, non-infringement or fitness for a particular purpose.

5.17 Nothing in these terms is intended to or shall affect any mandatory rights you have under applicable law as a consumer (if relevant) to the extent that excluding or limiting those rights is prohibited under applicable law.

6. **Product Liability**

6.1 The Customer acknowledges that PMT is providing the Goods as a supplier and is not the producer of the Goods (within the meaning of the Liability for Defective Products Act 1991) and the Customer's first recourse for liability should be against the producer of the Goods.³

6.2 PMT shall not be liable for any damage to property caused by the Goods after it has been delivered and whilst it is in the possession of the Customer. PMT shall not be liable for any damage to products manufactured by the Customer or products of which the Customer's products form a part.

6.3 The Customer shall indemnify and hold PMT harmless for any liability incurred towards any third party incurred for such damage to property as described in Condition 6.2 subject to the following:

- (a) on receipt of a third party claim, PMT shall notify the Customer of such a claim and shall not make any representations to the third party regarding liability; and
- (b) PMT shall provide assistance and information reasonably requested by the Customer to avoid, resist, mitigate, compromise or defend such claim and to appeal any judgment given in respect thereof; and
- (c) PMT shall not make any settlement or compromise of any claim without the prior written approval of the Customer.

6.4 The limitation of PMT's liability given in this Condition 6 shall not apply where PMT is guilty of gross negligence.

7. **Title and risk**

7.1 Risk in the Goods shall pass to the Customer:

- (a) in the case of Goods delivered at PMT's showroom, on completion of delivery of such Goods; or
- (b) in the case of Goods delivered at any location other than PMT's showroom, at the time when the carrier performing delivery takes possession of the Goods.

7.2 Title to the Goods shall pass to the Customer upon:

- (a) PMT receiving payment in full (in cash or cleared funds) for:
 - (i) the Goods; and
 - (ii) any other goods that PMT has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

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

- (a) store the Goods for which it has not paid separately from all other goods held by the Customer so that they remain readily identifiable as PMT's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify PMT immediately if it becomes subject to an Insolvency Event;
- (e) give PMT such information relating to the Goods as PMT may require from time to time; and
- (f) permit or procure permission for PMT, its agents and authorised representatives to enter any premises of the Customer or of any third party where the Goods are stored in order to inspect whether the Customer is in compliance with this Condition 7.3 and/or recover the Goods.

7.4 If before title to the Goods passes to the Customer the Customer becomes subject to an Insolvency Event, then, without limiting any other right or remedy PMT may have:

- (a) the Customer must immediately notify PMT of the event;
- (b) PMT may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. **Performance of the Services**

8.1 PMT shall from the date specified in the Order (as confirmed in the Confirmation of the Order) and for the duration of the Contract provide the Services to the Customer in accordance with the Contract in all material respects.

8.2 PMT shall use reasonable endeavours to perform the Services by the date(s) agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

8.3 PMT warrants that it shall provide the Services with reasonable care and skill.

8.4 The Customer shall without undue delay and in any case, within 30 days of becoming aware of any fact, matter or circumstances giving rise to a claim against PMT in respect of the Services, notify PMT in writing of the existence of the relevant facts, matters or circumstances giving rise to the claim. Failure to notify PMT within the specified time period shall be considered an acceptance of the fact, matter or circumstance and the Customer shall be deemed to have waived its claim.

8.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1893 or the Supply of Goods and Services Act 1980 (or any equivalent or replacement legislation) are, to the fullest extent permitted by law, excluded from any Contract.

9. **Customer obligations**

9.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification or the Services Specification (as the case may be) are complete and accurate;
- (b) co-operate with PMT in all matters relating to the Services;
- (c) provide PMT and PMT Personnel with access to the Customer's premises, office accommodation and other facilities reasonably required by PMT for the purpose of providing the Services;
- (d) provide such information to PMT as PMT may reasonably request for the purpose of providing the Services and ensure that such information is accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the export, receipt and use of the Goods and/or Services before the Commencement Date, including, subject to Condition 9.1(f), any export licences required in accordance with applicable laws;
- (f) in respect of any application which PMT makes in connection with the export of the Goods for a licence required under applicable laws governing export control (an "**Export Control Licence**"), provide such information and co-operation as PMT requires in respect of such application, and reimburse PMT for its costs incurred in making such application;
- (g) comply with the terms of any Export Control Licence in respect of the Goods, and provide PMT with such information and access to such records as PMT requires for purposes of compliance with the terms of any such Export Control Licence;
- (h) adequately prepare the Customer's premises for the supply of the Services;
- (i) keep and maintain all PMT Materials at the Customer's premises in safe custody at its own risk, maintain PMT Materials in good condition until returned to PMT and not dispose of or use PMT Materials other than in accordance with PMT's written instructions or authorisation; and
- (j) comply with all applicable law with respect to its activities under the Contract and its use of the Goods.

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

- (a) PMT shall without limiting its other rights or remedies have the right to suspend provision of the Goods and/or performance of the Services until the Customer remedies the Customer Default;
- (b) PMT shall not be liable for any losses sustained or incurred by the Customer arising directly or indirectly from PMT's failure or delay to perform any of its obligations as set out in this condition 9.2; and
- (c) the Customer shall reimburse PMT on demand for any losses sustained or incurred by PMT arising directly or indirectly from the Customer Default.

10. **Charges and payment**

10.1 The Price for the Goods shall be the price set out in the Confirmation of the Order, or, if no price is quoted, the price set out in PMT's published price list in force on the date of delivery. The Price is exclusive of:

- (a) the costs and charges of packaging, insurance and transport of the Goods, which the Customer shall pay to PMT; and

(b) amounts in respect of value added tax ("VAT"), which the Customer shall pay to PMT at the prevailing rate, subject to receipt of a valid VAT invoice.

10.2 The Charges for the Services shall be the charges set out in the Confirmation of the Order, or, where specified in the Confirmation of the Order, shall be calculated on a time and materials basis in accordance with this Condition 10.2:

(a) the Charges shall be calculated in accordance with PMT's standard daily fee rates in force on the date on which performance of the Services commences; and

(b) PMT shall be entitled to charge the Customer for any expenses reasonably incurred by PMT Personnel in connection with the Services, including travelling expenses, hotel costs, subsistence and any associated expenses, the cost of services provided by third parties and materials, and for any time spent on performance of the Services where such additional time was required as a result of the Customer's failure to comply with its obligations under the Contract.

10.3 The Charges for the Services exclude amounts in respect of VAT, which the Customer shall additionally be liable to pay to PMT at the prevailing rate, subject to the receipt of a valid VAT invoice.

10.4 PMT may invoice the Customer:

(a) for the Goods plus VAT at the prevailing rate (if applicable) on or at any time after dispatch of the Goods; and

(b) for the Charges plus VAT at the prevailing rate (if applicable) at such times as are specified in the Order or, if no such times are specified, monthly in arrears during the period of performance of the Services.

10.5 The Customer shall pay each invoice in full and in cleared funds within such period of the date of the invoice as is stated on the Order, or if no such period is stated, within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by PMT. Time of payment is of the essence.

10.6 Payment shall fall due in accordance with Condition 10.5 and PMT shall accordingly be entitled to sue for the price once it is due, despite the fact that title to the Goods has not passed to the Customer.

10.7 If the Customer fails to make any payment due to PMT under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 1.5% per month. 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.

10.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). PMT may at any time, without limiting any other rights or remedies, set off any amount owing to it by the Customer against any amount payable by PMT to the Customer.

11. Intellectual Property Rights

11.1 Any and all Intellectual Property Rights (including but not limited to know-how, trade secrets, drawings and technical information) owned or controlled by PMT (or its affiliates) prior to the entering into force of the Contract, or generated or acquired by PMT (or its affiliates) at any time subsequently thereto, supplied by PMT related to the Goods, the Services and/or the performance of the Contract, shall remain the property of the PMT and may only be used by the Customer for the intended purpose and fulfilment of the Contract and may not by the Customer be disclosed to third parties, reproduced or improperly used.

11.2 Nothing in the Contract shall constitute a transfer of ownership of IPR unless expressly stated therein. Any development or transfer of IPR shall be subject to separate agreement between the Customer and PMT.

11.3 The Customer may use the Deliverables only for the purpose of receiving the Services. The Customer shall not supply the Deliverables to any third party or use the Services or the Deliverables to provide a service to any third party.

11.4 To the extent that the Goods are to be manufactured or supplied in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify, keep indemnified and hold harmless PMT from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation whether arising in tort (including negligence), in contract or otherwise and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by PMT as a result of or in connection with any claim made against PMT for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with PMT's use of the Specification. This Condition 11.4 shall survive termination of the relevant Contract.

11.5 PMT may inform third parties that it provides or has provided the Goods or the Services to the Customer. The Customer licenses PMT to use its name and logo(s) for this sole purpose.

12. Intellectual Property Infringement

12.1 The Customer shall promptly and fully notify PMT of:

- (a) any actual, threatened or suspected infringement of any IPR which comes to the Customer's notice; and
- (b) any claim by any third party that comes to the Customer's notice that the sale or advertisement of the Goods infringes the rights of any person.

12.2 PMT shall, subject to the limitations set out in Condition 13, indemnify and hold harmless the Customer against any claim alleging an infringement that arises out of, or in connection with, the supply, or proper and designated use of the Goods.

12.3 Where the Customer is entitled to be indemnified under Condition 12.2, PMT shall have the exclusive right (at its cost) to conduct negotiations for the settlement of the claim, and any litigation or arbitration which arises out of or in connection with it. The Customer shall, at the reasonable request of PMT, assist in contesting the claim. The Customer shall not make any statement or admission in connection with any such claim which might be prejudicial to PMT.

12.4 In the event of an infringement claim that any IPR of any third party relating to the Goods is infringed by PMT, PMT undertakes at its sole discretion and expense, within a reasonable timeframe to do one or more of the following, which shall constitute full satisfaction by PMT of its obligations to the Customer regarding such infringement:

- (a) procure for the Customer the right to continued use of the Goods or the relevant parts thereof; or
- (b) modify the Goods, or replace any part, to make it functionally equivalent non-infringing Goods, or
- (c) terminate the affected supply immediately and provide the Customer with appropriate credits or refunds for fees or charges already due or paid for the supply that will not be delivered and performed due to such termination; or
- (d) for Goods already delivered to the Customer, provide the Customer with appropriate credits or refunds for fees or charges already due or paid for the supply, whereupon the Customer immediately shall cease using the Goods and, at PMT's expense, return the Goods to PMT.

12.5 The intellectual property indemnity in condition 12.2 is conditional and shall not be given, at PMT's discretion, if the Customer does not give notice to PMT of any such claim within twenty-eight (28) days of receiving the claim or if the claim or threatened claim relates to:

- (a) any modification of the Goods made by anyone other than PMT or PMT Personnel;
- (b) the use of Goods not provided by PMT or PMT Personnel; or
- (c) any feature of the Goods that was constructed, designed or configured according to the Goods Specification or any other specifications, designs, data or other instructions provided by the Customer or the Customer's personnel.

12.6 In this Condition 12, "**infringement**" means an infringement (or alleged infringement) of any intellectual property right relating to the Goods; "**claim**" means a claim (or proceedings pursuing a claim) alleging such infringement.

12.7 This clause shall apply mutatis mutandis for the benefit of PMT regarding infringements in relation to design documents, technical specifications or other instructions provided by the Customer.

13. **Liability**

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

- (a) death or personal injury caused by its negligence, or the negligence of the PMT Personnel (as applicable);
- (b) fraud or fraudulent misrepresentation; or
- (c) any matter in respect of which it would be unlawful for PMT to exclude or restrict liability.

13.2 Subject to condition 13.1, PMT shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for:

- (a) any indirect, special, incidental, consequential, punitive or pure economic loss or damage;
- (b) any loss of profits, anticipated profits, loss of production, loss of use, loss of revenue or business opportunities; or
- (c) damage to goodwill;

in each case arising as a direct or indirect result of, or in connection with, the Goods, the Services or the Contract.

13.3 Without prejudice to Condition 13.2, where any fire protection system is supplied by PMT and installed as part of the Goods or Services (a "**Fire Protection System**"),⁴ PMT's total liability to the Customer in respect of any losses suffered by the Customer arising out of or in connection with the Fire Protection System's:

- (i) false activation;
- (ii) partial activation failure; or
- (iii) complete failure to activate;

regardless of the cause or reason for such failure or false activation, and regardless of whether the operation of the Fire Protection System resulted in a fire being extinguished or not, shall be limited to the cost of replacement of the defective components of the Fire Protection System that caused the relevant

failure or false activation, and PMT shall, without prejudice to the earlier part of this Condition 13.3, have no liability in any event for any losses suffered by the Customer to the extent that such losses arise from the correct activation of the Fire Protection System, or of any third party fire prevention system, being activated as a result of the correct or faulty operation of the Equipment;

- 13.4 Notwithstanding anything to the contrary in the Order, the Contract or otherwise, PMT's overall liability whether in contract, tort (including negligence or breach of statutory duty) and whether by way of damages or otherwise arising by reason of or in connection with the provision of the Goods, the Services or otherwise under the Contract or under express or implied by law (including breach of contract or negligence under any indemnities) exceed, and its liability shall be limited in aggregate to an amount equal to 100% of the total Price of the Goods or the Charges for the Services of the Order placed by the Customer in respect of which the damage or loss arose.
- 13.5 The Customer shall use all reasonable efforts to mitigate any costs, losses and damages.
- 13.6 The Customer acknowledges that:
- (a) the values of the Price and of any Charges, including the Price for any Fire Protection System supplied by PMT, have been agreed between the parties taking into account the application of the provisions of this Contract, including, without limitation, the Warranty Conditions and the limitations of liability set out in this Condition 13, and that where the provisions of this Contract;
 - (b) the limitations of liability set out in this Condition 13 are reasonable taking into account the availability to the Customer of insurance against the potential losses it might incur under or in connection with this Contract; and
 - (c) PMT has recommended to the Customer that the Customer takes out and maintains at all times when using the Goods a suitable policy of insurance adequate to cover all potential losses arising in connection with the operation of the Goods, including without limitation fire damage caused by the Goods, including where such fire damage arises in any of the circumstances envisaged in condition 13.3.

14. Confidentiality

- 14.1 Subject to Condition 14.2, each party to the Contract (the "**Recipient**") shall:
- (a) use the Confidential Information the other party (the "**Disclosing Party**") solely for the performance of the Contract; and
 - (b) keep the Disclosing Party's Confidential Information strictly confidential and not, without the Disclosing Party's prior written consent, disclose it to any other person.
- 14.2 The Recipient may disclose the Disclosing Party's Confidential Information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Recipient's rights or carrying out its obligations under or in connection with the Contract and the Recipient shall ensure that such persons comply with this Condition 14.2;
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and
 - (c) if such information is public knowledge or already known to the Recipient at the time of disclosure or subsequently becomes public knowledge other than by breach of any duty of confidentiality (contractual or otherwise).
- 14.3 This Condition 14 shall survive termination of the Contract.

15. **Data protection**

- 15.1 PMT and the Customer (each the “**parties**” and individually a “**party**” for the purposes of this Condition 15) will comply with all applicable requirements of the Data Protection Legislation. This Condition 15 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 15.2 The parties acknowledge that for the purposes of Data Protection Legislation, each party (for such purposes, the “**Processor**”) may act as data processor of personal data relating to employees and agents of the other party, and in respect of which the other party is the data controller (for such purposes, the “**Controller**”) (where the terms personal data, data controller and data processor have the meanings as defined in the Data Protection Legislation). The Processor may process such personal data solely for the purposes of, and for so long as is necessary for, the administration of the Contract.
- 15.3 Without prejudice to the generality of Condition 15.1, each party (in its role as Controller) will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any personal data which it transfers to the other in its role as Processor, for the duration and purposes of the Contract.
- 15.4 Without prejudice to the generality of Condition 15.1, each party (in its role as Processor) shall, in relation to any personal data processed by it in connection with the performance by the Provider of its obligations under the Contract:
- (a) process that Personal Data only on the written instructions of the Controller unless the Processor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Data Processor to process personal data (EU Laws). Where the Processor is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, the Processor shall promptly notify the Controller of this before performing the processing required by the EU Laws unless those EU Laws prohibit the Processor from so notifying the Controller;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Controller, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data,
 - (c) ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (d) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - (e) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (f) the Controller or the Processor has provided appropriate safeguards in relation to the transfer;
 - (g) the data subject has enforceable rights and effective legal remedies;
 - (h) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred;

- (i) the Processor complies with reasonable instructions notified to it in advance by the Controller with respect to the processing of the personal data;
- (j) assist the Controller, at the Controller's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (k) notify the Controller without undue delay on becoming aware of a personal data breach;
- (l) at the written direction of the Controller, delete or return personal data and copies thereof to the Controller on termination of the Contract unless required by applicable law to store the personal data; and
- (m) maintain complete and accurate records and information to demonstrate its compliance with this Condition 15.

16. Termination

16.1 Without limiting its other rights or remedies, either party may terminate a Contract with immediate effect by giving written notice to the other party if the other party:

- (a) commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty days of being notified in writing to do so;
- (b) (being a body corporate) is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect of any of these circumstances (an "**Insolvency Event**");
- (c) (being an individual) is declared bankrupt, enters into any composition or arrangement with his creditors, has a receiver appointed to any of his assets, or ceases to carry on business or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application or the giving of any notice) by him or any other person in respect of any of these circumstances (also an "**Insolvency Event**") (or, the other party being a partnership, has a partner to whom any Insolvency Event applies);
- (d) (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
- (e) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

16.2 Without limiting its other rights or remedies, PMT may:

- (a) terminate a Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and fails to pay all outstanding amounts within fourteen days after being given written notice to do so; or
- (b) suspend provision of the Goods and/or Services under a Contract or any other contract between PMT and the Customer if the Customer becomes subject to an Insolvency Event or PMT reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment.

16.3 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to PMT all PMT's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, PMT shall submit an invoice, which the Customer shall pay immediately on receipt;
- (b) the Customer shall return all of the PMT Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, PMT 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 other than receiving and using the Services;
- (c) the respective rights and remedies that have accrued to PMT and the Customer as at termination shall be unaffected; and
- (d) conditions that expressly or by implication survive termination of the Contract shall continue in full force and effect.

17. **Force majeure**

Neither PMT or the Customer shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "**Force Majeure Event**" means any event which hinders, delays or prevents performance of a party's obligations and which is either beyond that party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, sanctions, embargo, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosion, collapse of building structures, fire, flood, drought, storm, earthquake, volcanic eruption, loss at sea, epidemic, pandemic or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

18. **Global Trade Compliance**

The Customer hereby certifies that it will comply with all applicable global trade laws and regulations, including all applicable customs, export control, and sanctions laws, regulations, and orders. The Customer agrees that no products, including items, hardware, technology, software and services, provided by PMT (or its Affiliates) and controlled under any applicable global trade laws and regulations shall be provided to any person or entity, unless the transfer is in accordance with applicable global trade laws and regulations or expressly permitted by applicable government license or authorization. The Customer shall not take any actions in furtherance of this contract that would cause PMT or any of its Affiliates to violate any global trade laws and regulations to which it is subject.

18.1 *End-Use/User Assurance -*

The Customer shall not use, re-export, transfer or retransfer the products for any purpose connected with chemical biological or nuclear weapons, or missiles capable of delivering such weapons, or for any nuclear explosive or unsafeguarded nuclear fuel cycle activity.

Where prohibited by applicable global trade laws and regulations, the Customer shall not use, re-export, transfer or retransfer the products for military end-use or to a military end-user, including military intelligence end-uses and end-users, without obtaining a license or authorization from the applicable government authority.

18.2 *Sanctions -*

The Customer shall strictly comply with, and adhere to, all applicable sanctions laws and regulations. Specifically, the Customer shall not, directly or indirectly, sell, export, reexport, transfer, or otherwise release or dispose of any Goods to or via a sanctioned person or territory, without having obtained a license or authorization from the applicable government authority.

18.3 *Indemnification -*

If the Customer breaches any certification, representation or undertaking described in this Section or, in PMT's reasonable opinion any such breach is likely to occur, the parties agree that PMT shall not be liable toward the Customer or any third party for any subsequent non-performance by PMT under any Contract and that the Customer shall indemnify and hold PMT and its Affiliates harmless from any claims or losses relating to such non-performance.

19. **General**

19.1 *Assignment subcontracting and other dealings -*

- (a) PMT may at any time assign, transfer, mortgage, charge, declare a trust over, subcontract, delegate or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, declare a trust over, subcontract, delegate or deal in any other manner with any or all of its rights or obligations under the Contract without PMT's written consent.

19.2 *Entire agreement -* The Contract (incorporating these Conditions) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of PMT which is not set out in the Contract. Any ambiguities in the interpretation of these Conditions shall not be construed against the drafting party.

19.3 *Variation -* Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by PMT.

19.4 *Waiver -* Except as set out in Condition 2.7, no failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of or prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19.5 *Severance -* If any 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 shall be deemed deleted. Any modification or deletion of a provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

19.6 *Notices -*

- (a) Any notice 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 by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or, if not signed for, at the time the notice is left at the correct address;

- (ii) if sent by pre-paid first-class post, at 09:00 on the second Business Day after posting; and
 - (iii) if sent by a signed-for next working day delivery service, at the time recorded by the delivery service.
- (c) This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A notice given under the Contract is not valid if sent by email.

19.7 *Third party rights* - No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.

19.8 *Relationship* - Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between PMT and the Customer, constitute either party the agent of the other party or authorise either party to make or enter into any commitments for or on behalf of the other party.

19.9 *Governing law* - The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of the Republic of Ireland. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this Contract. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply where specified in any Order but where they conflict with this Contract, this Contract shall prevail.

19.10 *Jurisdiction* - Any dispute arising out of or in connection with these conditions including regarding their existence, interpretation validity, termination or enforceability shall be discussed between the parties in good faith with a view to resolving such dispute. Where no resolution is reached, any dispute or claim arising out of or in relation to the Contract or these Conditions shall be determined by arbitration. The place of arbitration shall be Dublin, Ireland. The language of the arbitration shall be English. The final decision of the person or persons as PMT and the Customer may agree to appoint as arbitrator(s) or failing agreement as may be appointed at the request by either party to the Contract by the Chairman for the time being of the Chartered Institute of Arbitrators, Irish Branch shall be final and binding on the parties. The number of arbitrators shall be one, unless the parties or where applicable, the Chairman for the time being of the Chartered Institute of Arbitrators, Irish Branch, determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the arbitration should be composed of three arbitrators. Any such reference to arbitration under the Contract shall be deemed to be a submission to arbitration in accordance with the Arbitration Act 2010 (or any amendment thereto). Nothing in Condition 19.10 shall restrict either party from applying to a court of competent jurisdiction for injunctive relief against the other or from instituting proceedings (i) to ensure that the relevant claim falls within the relevant limitation period or (ii) for the recovery of any overdue payment that is not in dispute.

20. **Definitions**

20.1 The following capitalised terms shall have the meaning ascribed below:

- (a) **"Affiliate"** shall mean (a) any body corporate or business entity fifty percent (50%) or more of the voting share capital of which is, and continues to be, owned directly or indirectly by PMT; (b) any body corporate or business entity which directly or indirectly owns fifty percent (50%) or more of the voting share capital of PMT; (c) any body corporate or business entity under the direct or indirect control of such body corporate or business entity as described in (a) or (b);
- (b) **"Business Days"** means a day other than a Saturday, Sunday or public holiday in Ireland, when the banks in Dublin are open for business;
- (c) **"Charges"** means the charges for the Services as set out in the relevant Confirmation of the Order;
- (d) **"Commencement Date"** means has the meaning given in Condition 2.3;

- (e) **“Conditions”** means these terms and conditions and any other amending or supplementary terms and conditions which may be agreed in writing by PMT;
- (f) **“Confirmation of the Order”** means the notification of acceptance (in writing or by e mail) of the Order from PMT containing, *inter alia*, a confirmation of (i) the Goods Specification or the Services Specification (as the case may be); and (ii) the Price of the Goods or Charges for the Services (as the case may be);
- (g) **“Contract”** means the contract formed between the Customer and PMT following the provision of the Confirmation of the Order by PMT to the Customer accepting the terms of the Order;
- (h) **“Customer”** means the person or firm whom purchases the Goods or Services from PMT;
- (i) **“Customer Default”** has the meaning given in Condition 9.2;
- (j) **“Data Protection Legislation”** means all applicable data protection law including, without limitation, the General Data Protection Regulation (Regulation (EU) 2016/679) (the "**GDPR**"), the Data Protection 2018, the EU ePrivacy Directive 2002/58/EC (as amended), the European Communities (Electronic Communications Networks & Services) (Privacy and Electronic Communications) Regulations 2011, and any relevant transposition of any of the above laws, or successor or replacement to those laws (including, when it comes into force, the successor to the ePrivacy Directive) and, where the context so requires, equivalent or replacement legislation of any applicable jurisdiction, national implementing law or other national data protection legislation, all other applicable law, regulations and guidance, advice, opinions, directions, orders and codes of practice issued or approved by a Supervisory Authority (as defined in the GDPR) or the European Data Protection Board (as defined in the GDPR), as may be amended, updated or replaced from time to time;
- (k) **“Deliverables”** means any and all documentation, material, developments, deliveries and if applicable software, or other similar result of Services pursuant to any Contract and which may be subject to different deliveries, milestones etc., as amended and/or expanded from time to time, and irrespective of being work-in-progress, drafts, final versions or parts of, or complete deliverables.
- (l) **“Delivery Location”** means such location for delivery of the Goods or performance of the Services (as the case may be) as specified in Order;
- (m) **“Export Control Licence”** has the meaning given in Condition 9.1(f);
- (n) **“Force Majeure Event”** has the meaning given in Condition 17;
- (o) **“Goods”** means the goods and materials (or any part of them) set out in the Order;
- (p) **“Goods Specification”** means any specification of the Goods, including any related plans and drawings, that is agreed by PMT and the Customer and set out in the Order;
- (q) **“Insolvency Event”** has the meaning given in Condition 16.1;
- (r) **“Intellectual Property Rights”** or **“IPR”** means all intellectual property of whatever nature anywhere in the world and the rights subsisting therein, including, without prejudice to the generality of the foregoing: discoveries; inventions; improvements; designs; processes; research; Know-How; confidential and proprietary knowledge and information and any rights protecting same; works of authorship; computer software; databases; database rights; performances; trade or business names; domain names; patents, utility models and short term patents (and applications for same); trade marks and trade mark applications; rights (registered or unregistered and applications for same) in any design; copyright (including rights in computer software and semiconductor topographies); business goodwill and reputation and rights protecting same; rights of

use of allocated telephone numbers and all intellectual property rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world;

- (s) **“Know-How”** means all data and other information, whether confidential or not, relating to the Parties, including without limitation, trade secrets, confidential technical or proprietary industrial, commercial or business information and techniques in any form (including paper, electronically stored data, magnetic media, film and micro film), inventions, discoveries, improvements, processes, formulae, techniques, designs, specifications, drawings, plans, component lists, reports, notes of meetings, photographs, manuals, instructions and any similar proprietary rights which in any way subsist in anywhere in the world;
- (t) **“Order”** means means a order sent by the Customer ordering Goods or Services from PMT which are deemed to incorporate these Conditions;
- (u) **“Personal Data”** has the meaning given in the General Data Protection Regulation (Regulation (EU) 2016/679);
- (v) **“PMT”** means PMT Premier Machine Tools Limited and any Affiliate thereof;
- (w) **“PMT Materials”** means all materials, equipment, documents and other property of PMT or any PMT Personnel;
- (x) **“PMT Personnel”** means any employees, agents or subcontractors providing the Goods or the Services on behalf of PMT;
- (y) **“Price”** means the price for the Goods as set out in the relevant Confirmation of the Order;
- (z) **“Service Specification”** means any specification of the Services, including any related plans and drawings, that is agreed by PMT and the Customer and set out in the Order;
- (aa) **“Services”** means the services (or any part of them) set out in the Order;
- (bb) **“Warranty Conditions”** means any conditions and limitations applying to the warranties given in these Conditions, including (but not limited to) such limitations specified in Conditions 5.4 to 5.6, Condition 5.14, Condition 5.16 and Condition 13; and
- (cc) **“Warranty Period”** has the meaning given in Condition 5.1.