

AGREED TERMS

- (A) Prototype Projects is in the business of manufacturing products and has the facilities and resources to manufacture the products.
- (B) Prototype Projects owns certain intellectual property, know-how and equipment used in connection with the manufacture of the products.
- (C) The Customer wishes to commission Prototype Projects to manufacture the products, and Prototype Projects wishes to manufacture and supply the products to the Customer on the terms and conditions set out below.

1. INTERPRETATION

The following definitions and rules of interpretation in this clause apply in these Conditions.

1.1 Definitions:

"Mediation notice"	has the meaning given in clause 23.1.2.
"Affected Party"	has the meaning given in clause 20.2.
"Business Day"	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Commencement Date"	the date on which a contract is formed pursuant to clause 2.5.
"Conditions"	these terms and conditions.
"Confidential Information"	any information of a confidential nature concerning the business, affairs, customers, clients or suppliers of the other party, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.
"Customer"	the person or firm who places an order for and purchases manufactured by Prototype Projects.
"Data"	any and all material 2D and 3D data in relation to a Product whether produced by Prototype Projects, the Customer or a third party.
"Deliverables"	Products manufactured under an Order ready for Delivery to the Customer.
"Delivery"	completion or delivery of Products at the Delivery Location as specified in an Estimate.
"Delivery Date"	a date specified for Delivery of Products specified either in an Estimate or otherwise set out in writing by the parties.
"Delivery Location"	the Customer's business address on the Estimate or as otherwise agreed between the parties.
"Dispute"	has the meaning given in clause 23.1.
"Dispute Notice"	has the meaning given in clause 23.1.
"Estimate"	an estimate of price for Prototype Projects to supply the Products to the Customer to the standard of production requested by the Customer in accordance with the Process Guidelines and, if applicable, any additional costs including delivery, packaging and insurance.
"Estimate Number"	the reference number to be applied to an Order by Prototype Projects.
"First-Off"	pre-production samples of a Product in quantities as set out in an Estimate.
"Force Majeure Event"	has the meaning given in clause 20.1.
"Improvement"	any improvement, development, enhancement, modification or derivative of the Product, or its design or manufacturing process, which would make the Product cheaper, more effective, more useful or more valuable, or

would in any other way render the Product more commercially competitive.

"IPRs"

patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, 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, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

"Mandatory Policies"

Prototype Projects' business policies and codes notified to the Customer from time to time.

"month"

a calendar month.

"Order"

an order for Products based on an Estimate agreed by the Customer to be produced by Prototype Projects in accordance with clause 2.5.

"Process Guidelines"

those guidelines setting out various options for production in respect of materials, quality and strength of Products to be manufactured as set out on <http://www.prototypeprojects.com/expertise/finishing/> and/or sent to the Customer with an Estimate.

"Products"

the products set out in an Estimate and, where the context requires, as ordered by and supplied to the Customer in accordance with the Specification and the terms of these Conditions.

"Prototype Projects"

Prototype Projects Limited, a company incorporated in England and Wales with Company Number: 03926132 and registered office is Unit 1 Greenfield, Royston, Hertfordshire SG8 5HN.

"Price"

the price to be paid by the Customer to Prototype Projects in relation to an Order.

"Representatives"

has the meaning given in clause 15.2.1.

"Specification"

the specification of the Products supplied to Prototype Projects by the Customer, the Process Guidelines and any other related plans and drawings sent between the Customer and Prototype Projects.

"Term"

the term of the agreement, as determined in accordance with clause 16.

"Tooling"

manufacturing or working aids including cutting tools, master moulds and silicon tooling of a specialised nature whose use is limited to a Product.

"VAT"

value added tax chargeable in the UK.

"year"

1 January to the following 31 December.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of these Conditions.
- 1.3 A "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of these Conditions and shall have effect as if set out in full in the body of these Conditions and any reference to these Conditions includes the Schedules. References to clauses and Schedules are to the clauses and Schedules of these Conditions; and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.5 A reference to a "company" shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.7 These Conditions shall be binding on, and enure to the benefit of, the parties to these Conditions and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** includes fax and email.
- 1.10 Any obligation in these Conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to **these Conditions** or to any other agreement or document referred to in these Conditions is a reference to these Conditions or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of these Conditions) from time to time.
- 1.12 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. ESTIMATES AND ORDERS

- 2.1 Prototype Projects shall supply and the Customer shall purchase such quantities of Products as the Customer may order in accordance with these Conditions and the Order.
- 2.2 Prototype Projects shall review any enquiries made by the Customer or potential customer and if required, in Prototype Projects' sole opinion, liaise with the Customer to request any necessary further information required in order to provide an Estimate.
- 2.3 The Customer acknowledges that the Products will not be of mass production quality but will conform to the Process Guidelines.
- 2.4 An Estimate shall only be valid for a period of two weeks from its date of issue after which, the Estimate may need to be reviewed and amended if necessary.
- 2.5 Each Estimate shall (where possible):
- 2.5.1 specify the type and quantity of Products ordered with reference to the Specification; and
- 2.5.2 offer an estimated dispatch date.
- 2.6 The Customer and Prototype Projects will be deemed to enter into a contract for the Products on the earlier of either:
- 2.6.1 the Customer requesting Prototype Projects to proceed with the production of the Products as set out on the Estimate by return email; or
- 2.6.2 the Customer sending a purchase order to Prototype Projects in relation to an Estimate. Prototype Projects shall be free to accept or decline sending out an Estimate or agreeing a purchase order at its absolute discretion.
- 2.7 The Customer is responsible for ensuring that the terms of an Order and any applicable Specification attached to it are complete and accurate.
- 2.8 Each Order must have a minimum total Purchase Price value of £90.00 plus VAT, excluding any additional packaging, insurance and delivery costs.
- 2.9 The Customer waives any right it might otherwise have to rely on any term enclosed upon, delivered within or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.10 The Customer may within 2 days of placing an Order amend or cancel an Order by written notice to Prototype Projects. If the Customer amends or cancels an Order, its liability to Prototype Projects shall be limited to payment to Prototype Projects of all costs reasonably incurred by Prototype Projects in fulfilling the Order up until the date of deemed receipt of the amendment or cancellation, except that the Customer shall have no liability to Prototype Projects where the amendment or cancellation results from Prototype Projects' failure to comply with its obligations under these Conditions.

3. QUALITY AND PACKING

- 3.1 The Products supplied to the Customer by Prototype Projects under these Conditions shall:
- 3.1.1 conform to the Specification;
- 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any express purpose held out by the Customer in the Order; and
- 3.1.3 comply with all applicable statutory and regulatory requirements.
- 3.2 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from these conditions.
- 3.3 Prototype Projects shall ensure that the Products are properly packed and secured in a manner to enable them to reach their destination in good condition.
- 3.4 Prototype Projects shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Products in accordance with the terms of these conditions.
- 3.5 Prototype Projects shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling, and delivery of the Products.

4. FIRST-OFFS

- 4.1 Prototype Projects shall, at the request of the Customer on the Order, submit to the Customer for approval First-Offs of the Product.
- 4.2 Prototype Projects shall not commence further manufacture of the Product until the Customer has communicated its approval of the First-Offs to Prototype Projects in writing.
- 4.3 Any unreasonable delay in providing such approval to Prototype Projects under clause 4.2 may result in Prototype Projects revising the Price to reflect any increase in production, labour and material costs from the production of the First-Offs and further manufacture of the Products.
- 4.4 The Customer's approval of the First-Offs constitutes irrevocable confirmation that:
- 4.4.1 the Products manufactured in conformity with the First-Offs (differing only within normal industrial limits) will comply with the Specification; and
- 4.4.2 the Products will meet the industry standards and requirements of quality specified in clause 3, except for defects which are not capable of being revealed on reasonable inspection by the Customer.

5. DELIVERY

- 5.1 Any dates quoted for Delivery are approximate only and time of Delivery is not of the essence. Prototype Projects shall not be liable for any delay in Delivery that is caused by a Force Majeure Event or the Customer's failure to provide Prototype Projects with adequate delivery instructions.
- 5.2 Delivery is completed either:
- 5.2.1 (for deliveries) on the completion of unloading of the Deliverables at the Delivery Location; or
- 5.2.2 (for collection) Prototype Projects places the Deliverables at the Customer's disposal at the Delivery Location.
- 5.3 Prototype Projects shall not deliver Products by instalment except by prior written agreement of the parties. Where Products are to be delivered by instalment, they may be invoiced and paid for separately.
- 5.4 Failure to pay an instalment invoice shall entitle Prototype Projects, at its sole discretion, to withhold further instalment deliveries until such invoice is satisfied.
- 5.5 Delays in the delivery of Deliverables shall **not** entitle the Customer to:
- 5.5.1 refuse to take delivery of the Deliverables;
- 5.5.2 claim damages; or
- 5.5.3 terminate these Conditions, subject always to clause 17.

- 5.6 Prototype Projects shall have no liability for any failure or delay in delivering the Deliverables to the extent that any failure or delay is caused by the Customer's failure to comply with its obligations under these Conditions.
- 5.7 If the Customer fails to take delivery of Deliverables on the Delivery Date then, except where that failure or delay is caused by Prototype Projects' failure to comply with its obligations under these Conditions:
- 5.7.1 delivery of the Deliverables shall be deemed to have been completed at 9.00 am on the Delivery Date; and
- 5.7.2 Prototype Projects shall store the Deliverables until Delivery takes place, at its sole discretion, and charge the Customer for all related costs and expenses (including insurance and storage costs).
- 5.8 Each Delivery shall be accompanied by a delivery note from Prototype Projects showing the Estimate Number, the type and quantity of Products included in the Order and, in the case of Products being delivered by instalments, the outstanding balance of Products remaining to be delivered.
- 6. ACCEPTANCE AND DEFECTIVE PRODUCTS**
- 6.1 The Customer may reject any Products delivered to it that do not comply with clause 3.1, provided that:
- 6.1.1 notice of rejection is given to Prototype Projects within five Business Days of Delivery; and
- 6.1.2 none of the events listed in clause 6.3 apply.
- 6.2 If the Customer fails to give notice of rejection in accordance with clause 6.1, it shall be deemed to have accepted the Products.
- 6.3 Prototype Projects shall not be liable for a Products' failure to comply with the warranty set out in clause 3.1 in any of the following events:
- 6.3.1 the Customer makes any further use of those Products after giving notice in accordance with clause 6.1;
- 6.3.2 the defect arises because the Customer failed to follow Prototype Projects' oral or written instructions for the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
- 6.3.3 the defect arises as a result of Prototype Projects following any drawing, design or Specification supplied by the Customer;
- 6.3.4 the Customer alters or repairs those Products;
- 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 6.3.6 the Products differ from the Specification as a result of changes made by Prototype Projects to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 If the Customer rejects some or all Products under clause 6.1, then the Customer shall return the rejected Products to Prototype Projects to allow for inspection and, if Prototype Projects agree that such Products are entitled to be rejected under clause 6.1, the Customer shall be entitled to:
- 6.4.1 require Prototype Projects to repair or replace the rejected Products; or
- 6.4.2 require Prototype Projects to repay the price of the rejected Products in full.
- 6.5 Once Prototype Projects has complied with the Customer's request under clause 6.4, it shall have no further liability to the Customer for the rejected Products' failure to comply with clause 3.1.
- 6.6 The terms of these Conditions shall apply to any repaired or replacement Products supplied by Prototype Projects.
- 7. TITLE AND TERM OF SALE (RISK)**
- 7.1 Risk – All estimates and orders are subject to Incoterms® 2010 EX Works; Risk in Products shall pass to the Customer at the point of collection.
- 7.2 Title to Products shall not pass to the Customer until Prototype Projects receives payment in full (in cash or cleared funds) for the Products and all other sums that are due to Prototype Projects from the Customer for sales of Products or on any account, in which case title to these Products shall pass at the time of payment of all such sums.
- 7.3 Until title to Products has passed to the Customer, the Customer shall:
- 7.3.1 store those Products separately from all other goods held by the Customer so that they remain readily identifiable as Prototype Projects' property;
- 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to those Products; and
- 7.3.3 maintain those Products in satisfactory condition and keep them insured on Prototype Projects' behalf for their full price against all risks with an insurer that is reasonably acceptable to Prototype Projects. The Customer shall obtain an endorsement of Prototype Projects' interest in the Products on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow Prototype Projects to inspect those Products and the insurance policy.
- 7.4 Subject to clause 7.5, the Customer may resell or use Products in the ordinary course of its business (but not otherwise) before Prototype Projects receives payment for the Products. However, if the Customer resells the Products before that time:
- 7.4.1 it does so as principal and not as Prototype Projects' agent; and
- 7.4.2 title to those Products shall pass from Prototype Projects to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to Products passes to the Customer the Customer becomes subject to any of the events listed in clause 17.1.4 to clause 17.1.11 (inclusive), then, without limiting any other right or remedy Prototype Projects may have:
- 7.5.1 the Customer's right to resell Products or use them in the ordinary course of its business ceases immediately;
- 7.5.2 an action for damages for conversion against a receiver or liquidator personally who sells goods which were identifiably Prototype Projects; and
- 7.5.3 Prototype Projects may at any time:
- (a) require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product; and
- (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Products are stored to recover them.
- 8. PRICE AND PAYMENT TERMS**
- 8.1 The Price is exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from Prototype Projects, pay to Prototype Projects any additional amounts in respect of VAT as are chargeable on a supply of Products.
- 8.2 The Customer shall:
- 8.2.1 pay the Price on the date the Order is submitted to Prototype Projects
- 8.3 At the sole discretion of Prototype Projects and where the Customer has previously placed Orders, the Customer shall be liable to pay the Supplier within 30 days of the date of invoice, by means of a Bank Transfer (BACS), Direct Debit, Credit/Debit Card or by Cheque.
- 8.4 All payments for Tooling in relation to the Order shall form part of the Price as an additional reference line on the invoice.
- 8.5 Payment shall be made in sterling and in full and cleared funds into the bank account nominated in writing by Prototype Projects.
- 8.6 Each invoice shall quote the relevant Estimate number.
- 8.7 If a party fails to make any payment due to the other under these Conditions by the due date for payment, then, without limiting the other party's remedies under these Conditions, the defaulting party shall pay interest on the overdue amount at the rate of 4% a year above the Bank of England's base rate from time to time. This interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. In relation to payments disputed in good faith, interest under this clause 8.7 is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.

- 8.8 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify Prototype Projects in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. If the parties have not resolved the dispute within 30 days of the Customer giving notice to Prototype Projects, the dispute shall be resolved in accordance with clause 23. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in this clause 8.
- 8.9 Each party may at any time, without notice to the other party, set off any liability of the other party to it against any liability it has to the other party, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under these Conditions. Any exercise by a party of its rights under this clause 8.9 shall not limit or affect any other rights or remedies available to it under these Conditions or otherwise.
- 8.10 All payments payable to Prototype Projects by the Customer under these Conditions shall become immediately due and payable:
- 8.10.1 on termination of these Conditions for any reason; or
- 8.10.2 if the Customer becomes subject to any of the events listed in clause 17.1.4 to clause 17.1.11 inclusive.
- 8.11 This clause 8 is without prejudice to any right to claim for interest under the law or under these Conditions.
- 9. TOOLING AND DATA**
- 9.1 All Tooling and Data shall be retained and stored by Prototype Projects for 6 months after the Order has been Delivered.
- 9.2 In the event a Customer wishes to extend the retention period set out in clause 9.1, it must request the same in writing to Prototype Projects.
- 9.3 If Prototype Projects agrees to extend such retention period, the Customer may be charged for storage and insurance for such Tooling and Data.
- 9.4 Subject to complying with the retention period and any agreed extension thereof in this clause 9, Prototype Projects shall not be obligated to ask or inform the Customer when it disposes of such Tooling and Data.
- 10. INSURANCE**
- 10.1 During these Conditions Prototype Projects shall maintain in force the following insurance policies with reputable insurance companies:
- 10.1.1 public liability insurance with a limit of at least £2,500,000 a claim; and
- 10.1.2 product liability insurance with a limit of at least £2,500,000 for claims arising from a single event or series of related events in a single calendar year.
- 10.2 Prototype Projects shall ensure that any sub-contractors also maintain adequate insurance having regard to their obligations under these Conditions.
- 11. COMPLIANCE WITH LAWS AND POLICIES**
- 11.1 In performing its obligations under the agreement, the Customer shall comply with:
- 11.1.1 all applicable laws, statutes, regulations and codes from time to time in force; and
- 11.1.2 the Mandatory Policies.
- 11.2 Prototype Projects may terminate the agreement with immediate effect by giving written notice to the Customer if the Customer commits a breach of clause 11.1.
- 12. INTELLECTUAL PROPERTY**
- 12.1 Prototype Projects acknowledges that the IPRs owned by the Customer on or before the Commencement Date ("**Customer IPR**") are and remain the exclusive property of the Customer or, where applicable, the third-party licensor from whom the Customer derives the right to use them.
- 12.2 The Customer acknowledges that all IPRs used for the manufacture of the Product to the extent not owned by Prototype Projects on or before the Commencement Date shall remain the exclusive property of Prototype Projects (or, where applicable, the third-party licensor from whom Prototype Projects derives the right to use them).
- 12.3 All IPRs in respect of any Improvement shall belong to the party who made, developed or acquired it.
- 12.4 The Customer hereby grants to Prototype Projects a non-exclusive, royalty-free licence (including the right to grant sub-licences to permitted subcontractors) to use the Customer IPRs solely for the purpose of performing its obligations under these Conditions.
- 12.5 Prototype Projects' use of IPRs is limited to applying them to the Products in the form and manner specified by the Customer from time to time, and not otherwise.
- 12.6 The Customer shall at its own cost provide Prototype Projects with details of any Improvement belonging to the Customer which it wishes to be incorporated into the Product, or any other modification which it wishes to be made to the Product from time to time. The Customer hereby grants to Prototype Projects a non-exclusive, royalty-free, worldwide licence to use such Improvement or modification solely for the purposes of these Conditions.
- 12.7 Prototype Projects shall provide the Customer with details of any Improvement which is made, developed or acquired by Prototype Projects from time to time.
- 12.8 The Customer may use any Improvement made or acquired by Prototype Projects for its own purposes and Prototype Projects hereby grants to the Customer a non-exclusive, royalty-free licence for the Term to use Improvements discovered by Prototype Projects.
- 12.9 The disclosure of any Improvements by one party to the other shall be subject to the obligations of confidentiality set out in clause 15.
- 12.10 The Customer shall indemnify Prototype Projects against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other professional costs and expenses) suffered or incurred by Prototype Projects arising out of or in connection with any claim made against Prototype Projects for actual or alleged infringement of a third party's IPRs or moral rights arising out of or in connection with the use of the Customer IPRs in accordance with the terms of these Conditions.
- 13. LIMITATION OF LIABILITY**
- 13.1 This clause 13 sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other for:
- 13.1.1 any breach of these Conditions however arising;
- 13.1.2 any use made or resale of the Products by the Customer, or of any product incorporating any of the Products; and
- 13.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Conditions.
- 13.2 Nothing in these Conditions shall limit or exclude the liability of either party for:
- 13.2.1 death or personal injury resulting from negligence; or
- 13.2.2 fraud or fraudulent misrepresentation; or
- 13.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 13.2.4 breach of section 2 of the Consumer Protection Act 1987; or
- 13.2.5 the indemnity contained in clause 12.
- 13.3 Without prejudice to clause 13.2, neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- 13.3.1 loss of profit;
- 13.3.2 loss of business;
- 13.3.3 loss of business opportunity; or
- 13.3.4 special, indirect or consequential damage,
- suffered by the other party that arises under or in connection with these Conditions.
- 13.4 Without prejudice to clause 13.2 or clause 13.3, Prototype Projects' total liability arising under or in connection with these Conditions, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory

- duty or misrepresentation, or otherwise, shall in all circumstances be limited to the Price.
- 13.5 Without prejudice to clause 13.2 or clause 13.3, the Customer's total liability arising under or in connection with these Conditions, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited as follows:
- 13.5.1 for non-payment of invoices for Products purchased, to the amount unpaid, and any interest due on such amount under clause 8.7; or
- 13.5.2 for any other type of liability, to 150% of the Price.
- 14. ASSIGNMENT AND OTHER DEALINGS**
- 14.1 Prototype Projects may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under these Conditions.
- 14.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under these Conditions.
- 15. CONFIDENTIALITY**
- 15.1 Each party undertakes that it shall not at any time during these Conditions and for a period of two years after termination disclose to any person any Confidential Information, except as permitted by clause 15.2.
- 15.2 Each party may disclose the other party's Confidential Information:
- 15.2.1 to its employees, officers, agents, consultants or subcontractors ("Representatives") who need to know this information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Conditions, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 15 as though they were a party to these Conditions. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause 15; and
- 15.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Conditions are granted to the other party or to be implied from these Conditions. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.
- 16. COMMENCEMENT AND TERM**
- These Conditions shall begin on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 17, until the Deliverables are accepted by the Customer pursuant to clause 5 whereupon it shall terminate automatically without notice ("Term").
- 17. TERMINATION AND SUSPENSION**
- 17.1 Without affecting any other right or remedy available to it, either party may terminate these Conditions on giving not less than two weeks' prior written notice to the other party. Without affecting any other right or remedy available to it, either party may terminate these Conditions with immediate effect by giving written notice to the other party if:
- 17.1.1 the other party fails to pay any undisputed amount due under these Conditions on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- 17.1.2 the other party commits a material breach of any other term of these Conditions and that breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 17.1.3 the other party repeatedly breaches any of the terms of these Conditions in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these Conditions;
- 17.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2);
- 17.1.5 the other party begins negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- 17.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party;
- 17.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- 17.1.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 17.1.9 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 17.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 17.1.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.1.4 to clause 17.1.10 inclusive;
- 17.1.12 the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- 17.1.13 any Force Majeure Event prevents the other party from performing its obligations under these Conditions for any continuous period of three months.
- 17.2 Without limiting its other rights or remedies, Prototype Projects may suspend provision of the Products under the agreement or any other contract between the Customer and Prototype Projects if the Customer becomes subject to any of the events listed in clause 17.1.4 to clause 17.1.11, or Prototype Projects 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 these Conditions on the due date for payment.
- 18. OBLIGATIONS ON TERMINATION**
- 18.1 On termination of these Conditions, each party shall promptly:
- 18.1.1 return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it in connection with the supply and purchase of the Products under these Conditions;
- 18.1.2 return to the other party all documents and materials (and any copies) containing the other party's Confidential Information; and
- 18.1.3 erase all the other party's Confidential Information from its computer systems (to the extent possible); and
- 18.1.4 the Customer shall pay any and all costs incurred by Prototype Projects for all of the Customer's Orders up to the date of termination.
- 19. CONSEQUENCES OF TERMINATION**
- 19.1 On termination of these Conditions the following clauses shall continue in force:
- 19.1.1 Clause 1 (Interpretation);
- 19.1.2 Clause 5 (Delivery);
- 19.1.3 Clause 7 (Title and Risk);
- 19.1.4 Clause 8 (Price and Payment Terms);
- 19.1.5 Clause 9 (Tooling and Data);

- 19.1.6 Clause 12 (Intellectual Property);
 - 19.1.7 Clause 13 (Limitation of liability);
 - 19.1.8 Clause 15 (Confidentiality);
 - 19.1.9 Clause 18 (Obligations on termination);
 - 19.1.10 Clause 19 (Consequences of termination);
 - 19.1.11 Clause 22 (Severance);
 - 19.1.12 Clause 23 (Multi-tiered dispute resolution procedure);
 - 19.1.13 Clause 26 (Waiver);
 - 19.1.14 Clause 28 (Entire Agreement);
 - 19.1.15 Clause 29 (Third Party Rights);
 - 19.1.16 Clause 30 (Governing law); and
 - 19.1.17 Clause 31 (Jurisdiction).
- 19.2 Termination of these Conditions shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of the agreement that existed at or before the date of termination.

20. FORCE MAJEURE

- 20.1 "Force Majeure Event" means any circumstance not in a party's reasonable control including, without limitation:
- 20.1.1 acts of God, flood, drought, earthquake or other natural disaster;
 - 20.1.2 epidemic or pandemic;
 - 20.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - 20.1.4 nuclear, chemical or biological contamination, or sonic boom;
 - 20.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
 - 20.1.6 collapse of buildings, fire, explosion or accident;
 - 20.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
 - 20.1.8 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
 - 20.1.9 interruption or failure of utility service.
- 20.2 Provided it has complied with clause 20.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under these Conditions by a Force Majeure Event ("Affected Party"), the Affected Party shall not be in breach of these Conditions or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 20.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 20.4 The Affected Party shall:
- 20.4.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
 - 20.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 20.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate these Conditions by giving 2 weeks' written notice to the Affected Party.

21. COSTS

Except as expressly provided in these Conditions, each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of these Conditions and any documents referred to in it.

22. SEVERANCE

- 22.1 If any provision or part-provision of these Conditions 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 that modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to, or deletion of, a provision or part-provision under this clause 22 shall not affect the validity and enforceability of the rest of these Conditions.
- 22.2 If any provision or part-provision of these Conditions is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

23. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

- 23.1 If a dispute arises out of or in connection with these Conditions or the performance, validity or enforceability of it ("Dispute") then the parties shall follow the procedure set out in this clause 23:
 - 23.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the Manager of Prototype Projects and Manager of the Customer shall attempt in good faith to resolve the Dispute;
 - 23.1.2 if the CEO of Prototype Projects and CEO of the Customer are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("Mediation Notice") to the other party to the Dispute, referring the dispute to mediation. A copy of the Mediation notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 14 days after the date of the Mediation notice.
- 23.2 No party may commence any court proceedings under clause 31 in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 23.3 If the Dispute is not resolved within 30 days after service of the ADR notice the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 31.

24. FURTHER ASSURANCE

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to these Conditions.

25. VARIATION

No variation of these Conditions shall be effective unless it is in writing and signed by both parties (or their authorised representatives).

26. WAIVER

- 26.1 A waiver of any right or remedy under these Conditions or by law shall only be effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 26.2 A failure or delay by a party to exercise any right or remedy provided under these Conditions or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these Conditions or by law shall prevent or restrict the further exercise of that or any other right or remedy.

27. NOTICES

- 27.1 Any notice given to a party under or in connection with these Conditions shall be in writing and shall be:

- 27.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 27.1.2 sent by email to the address specified in by the parties from time to time in writing.
- 27.2 Any notice shall be deemed to have been received:
 - 27.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - 27.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
 - 27.2.3 if sent by fax or email, at 9.00 am on the next Business Day after transmission.
- 27.3 This clause 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.

28. ENTIRE AGREEMENT

- 28.1 These Conditions, the Estimate, the Order, the Processing Guidelines, the Specification and any other document referred to herein 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.
- 28.2 Each party acknowledges that in entering into these Conditions it does not rely on, and shall have no remedies for, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions.
- 28.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Conditions.
- 28.4 Nothing in this clause 28 shall limit or exclude any liability for fraud.

29. THIRD PARTY RIGHTS

These Conditions does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions.

30. GOVERNING LAW

These Conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

31. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Conditions or its subject matter or formation.