

This Agreement is made between **DTC Communications, Inc.**, a company incorporated in New Hampshire, whose address is 20122 Ashbrook Place Suite 150 Ashburn, VA 20147-3450 ("**Buyer**"); and the named recipient company ("**Supplier**") of the Order

Supplier and Buyer shall be known individually as "**Party**" and collectively as the "**Parties**"

1. Agreement

- 1.1 Supplier shall provide the Products to Buyer as agreed to from time to time by the Parties pursuant to Orders on the terms set out herein ("**Terms**"). Each Order shall include a reference to, and be subject to these terms and conditions to the exclusion of any other terms that Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2. Ordering Process

- 2.1 Supplier will procure all components necessary to fulfil Forecasts (if supplied) and Orders issued in accordance with this Agreement and ensure sufficient capacity is available to achieve the quantities and delivery dates specified in such Forecasts and Orders. Forecasts are for planning purposes only and do not create a commitment on the part of the Buyer.
- 2.2 The Order constitutes an offer by Buyer to purchase the Products from Supplier in accordance with these Terms.
- 2.3 The Order shall be deemed to be accepted on the earlier of:
 - 2.3.1 Supplier issuing written acceptance of the Order; or
 - 2.3.2 any act by Supplier consistent with fulfilling the Order, at which point an Agreement shall come into existence.
- 2.4 If there is a conflict of terms the order of precedence shall be:
 - 2.4.1 The typewritten provisions on the face of the applicable accepted Order;
 - 2.4.2 These Terms of purchase;
 - 2.4.3 Any appendices, program schedules or other written agreements attached to these Terms as agreed between the Parties
- 2.5 Supplier will supply the Products strictly in accordance with Buyer's requirements as detailed in the Order. Buyer may at any time request changes in writing relating to the Order, including changes in the drawings or specifications, method of shipment, quantities, packing or time or place of delivery. If such changes result in an increase in cost of, or time required for, performance of the Order an equitable adjustment will be made to the price, delivery schedule or both. Any such claim or adjustment must be approved by Buyer in writing before Supplier proceeds with such changes.
- 2.6 Supplier shall accept all Orders that are placed within the Product lead-times as agreed by the Parties. In the event that Supplier is unable to meet the delivery date set forth due to the delivery date being shorter than the Product lead-time, the Parties shall negotiate in good faith to resolve the matter.
- 2.7 Supplier will notify Buyer in writing of any delay in delivery, fourteen (14) days in advance of Order delivery requirements.
- 2.8 The Parties acknowledge that the pre-printed provisions appearing on the reverse of, or attached to, an Order, an Order acknowledgment, or invoice shall be deemed deleted and of no effect whatsoever. Supplier shall ensure that no such pre-printed terms are on an Order acknowledgement sent to the Buyer.

3. General

- 3.1 Any notice or demand in connection with the Agreement will be in writing and may be delivered by hand, by prepaid first class post or other next working day delivery service, by commercial courier, by fax or email, addressed to the recipient at its registered office (or such other address or person which the recipient has notified in writing to the sender in accordance with this clause).
- 3.2 The notice, demand or communication will be deemed to have been duly served:
 - 3.2.1 if delivered by hand, at the time of delivery;
 - 3.2.2 if sent by prepaid first class post or other next working day delivery service at 9.00am on the second Business Day after posting;
 - 3.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
 - 3.2.4 if sent by fax or email one Business Day after transmission.
- 3.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 3.4 Any person who is not a party to the Order, shall not have any rights to enforce its terms.
- 3.5 If any provision of this Agreement or an Order is found invalid or unenforceable, the remaining provisions will be given effect as if the invalid or unenforceable provision were not a part of this Agreement or the Order (as the case may be).
- 3.6 Supplier shall not assign the benefit or delegate or subcontract the burden of this Agreement or any Order (whether in whole or in part) without the prior written consent of Buyer.
- 3.7 Neither this Agreement nor an Order may be varied or amended except in writing and signed by a duly authorized officer of each Party.
- 3.8 The headings contained in this Agreement and an Order are for reference only and shall not be used in its

construction or interpretation.

- 3.9 References to any gender includes any other gender and the plural shall include the singular and bodies corporate shall include unincorporated bodies and (in each case) vice versa.
- 3.10 Reference to any statute, ordinance, order, regulation or other similar instrument shall be construed to include a reference to the statute, ordinance, order, regulation or instrument as from time to time amended, extended, re-enacted or consolidated and all statutory instruments, orders, regulations or instruments made pursuant to it.
- 3.11 No failure or delay by either Party to exercise any right, power or remedy under this Agreement will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 3.12 This Agreement 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 Florida.
- 3.13 Each Party irrevocably agrees that the courts of Florida shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

4. **Import/Export**

- 4.1 The Products may be subject to applicable export or import laws and regulations worldwide (collectively, "**Export/Import Law**").
- 4.2 Supplier agrees to comply strictly with all Export/Import Laws applicable to the Products. Supplier shall promptly notify Buyer of any authorisation requirements under Export/Import Laws that may apply to delivery of the Products to Buyer site(s).

5. **FAR/DFARS/DEFCONs**

- 5.1 Any FAR/DFARS/DEFCONs clauses listed or referred to in the Order are incorporated in the Order by reference with the same force and effect as if they were included in full text and with such amendments to the applicable definitions necessary to create legal relationships between Buyer and Supplier identical to, but not dependent on, the relationship the FAR and DFARS intend to establish between the "Government" and a "Contractor." (reference DTC Supplements I & II)

6. **Products**

- 6.1 Supplier warrants that:
 - 6.1.1 it shall use all best skill and care in providing the Products to Buyer and shall perform its obligations in accordance with this Agreement and the Order;
 - 6.1.2 title to the Products ordered under the Order shall transfer in accordance with clause 6.6.1 free from any security interest or other lien or encumbrance;
 - 6.1.3 it has the rights to grant the licence rights set out in this Agreement and in the Order;
 - 6.1.4 that the Products are of good quality, material and workmanship in accordance with best industry practice;
 - 6.1.5 the Products are and will be fit for their intended purpose and use including any purpose and use made known to Supplier by Buyer;
 - 6.1.6 the Products are free from defects in design, materials and workmanship and hazards to health;
 - 6.1.7 the Products are new and not used, refurbished, repaired or reconditioned and not of an age that deteriorates or impairs their usefulness, safety or operation;
 - 6.1.8 the Products do not infringe the rights of any third party;
 - 6.1.9 no Products, or part or component thereof, or any material supplied hereunder shall be counterfeit. The Supplier is liable for all costs without limitation relating to the removal and replacement of suspect counterfeit product, including Buyer's cost of removing and replacing suspect product and testing necessitated by the reinstallation.
- 6.2 Supplier will at no additional fee or sum for the period of two (2) years from delivery, provide the warranties set out in clause 6.1.
- 6.3 Supplier shall deliver the Products CIP Incoterms 2010/ F.O.B. Destination to the delivery address stated on the Order unless otherwise specified in the Order. Upon delivery of the Products by Supplier to Buyer, Buyer (or Supplier at the request of Buyer) may perform an Acceptance Test upon such Products.
- 6.4 No charge shall be made for attendance at any Acceptance Test. Where applicable, Buyer shall notify Supplier in writing as soon as reasonably practicable after the Products pass the Acceptance Tests.
- 6.5 Without prejudice to Buyer's right to terminate pursuant to clause 12.1, if the Products fail to pass any Acceptance Tests or repeat Acceptance Tests, Supplier shall notify Buyer that the Acceptance Tests have not been passed and Buyer may:
 - 6.5.1 require Supplier to conduct, and Supplier shall immediately conduct, free of charge all such reasonable alterations or Modifications to the Products including but not limited to any that the Buyer shall in the circumstances judge necessary to enable repeat Acceptance Tests to be passed and Supplier shall subject the Products to repeat Acceptance Tests as soon as possible and in any event no later than 15 days after receipt of such notice from Buyer; or
 - 6.5.2 require Supplier to take the actions specified in clause 6.5.1 again; or
 - 6.5.3 accept the Products proposed to be used by Supplier "as is" subject to a reduction in the charges which accurately reflects both the reduced functionality and performance of, and any reduced costs of developing, the Products.
- 6.6 Supplier:
 - 6.6.1 agrees that title to the Products shall pass to the Buyer on delivery unless otherwise agreed in

writing; and

6.6.2 grants a world-wide, royalty free, perpetual, irrevocable, non-transferable licence to use, distribute and onward develop the software and any utilisation rights of the Products to Buyer) upon delivery or payment, whichever is the earlier. Supplier shall bear the risk of loss and damage to the Products until they are delivered (and off loaded) in conformity to the Order at Buyer's destination specified in the Order.

6.7 When delivering Products that contains software to Buyer, Supplier shall deliver all of the following:

6.7.1 the object code for the software;

6.7.2 the source code for the software;

6.7.3 all Developments and Documentation relating to the software;

6.7.4 copies of all applications and tools used in the creation or development of the software;

6.7.5 any password and encryption details necessary to access the software or its source code; and

6.7.6 full details of the software, including full name and version details, design information including module names and functionality, the type of media on which the software is provided, details of any commands required to install and make a backup copy of the software, any compression used in packaging the software, and details of operating systems on which the software runs.

6.8 Supplier may not deliver the Products by separate instalments unless agreed in writing by Buyer.

6.9 Time for the performance of all obligations of Supplier under this Agreement and Orders is of the essence and Supplier shall complete its obligations in accordance with any delivery date (Section 2. 7), implementation or project plan agreed between the Parties. If Supplier becomes aware of any matters which may affect the performance of Supplier's obligations under this Agreement, or if it has reason to anticipate the occurrence of such matters, Supplier shall promptly notify Buyer of the matter and the anticipated duration of their impact. The Parties will discuss in good faith a resolution of the matter.

7. Developments

7.1 The Parties agree that all Intellectual Property Rights in Buyer Data are exclusively vested in Buyer and that Supplier shall not gain any rights to any Buyer Data or any computer programs (or Modifications relating thereto) proprietary to Buyer nor, except to the extent expressly licensed for use by Supplier in this Agreement, have any right to use or make any Modification to any such items.

7.2 Supplier shall observe and perform all requirements and terms as requested by and notified to Supplier by or on behalf of the proprietors of any third party software specified in the Order ("**Third Party Software**") and shall not cause or permit Supplier or any sub-contractor of Supplier to cause Buyer to breach any of the obligations on the licensee's part specified in any contract for the provision of Third Party Software.

7.3 The Parties agree that Supplier shall not gain title to nor, except to the extent licensed by Buyer for use in this Agreement, have any right to use or make any Modification in respect of:

7.3.1 any software (and Modifications thereto) proprietary to Buyer; or

7.3.2 the Third Party Software (and Modifications thereto); or

7.3.3 Buyer Data.

7.4 All Intellectual Property Rights vesting in either Party prior to the date of this Agreement shall remain vested in such Party notwithstanding any other provision of this Agreement.

7.5 All Intellectual Property Rights in any Developments and other materials such as designs, plans, specifications, models, documents, software including (without limitation) source codes and other records or information created, developed or made by or on behalf of Supplier in the performance of the Order or to enable the performance of the Order shall, at the date of the Order or (if later) on creation of the rights, vest in Buyer. Supplier assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to Buyer.

7.6 Supplier hereby grants to Buyer a non-exclusive, perpetual, world-wide, irrevocable and royalty-free licence (with the right to grant sub-licences) to use, develop and make Modifications in respect of all other materials such as designs, plans, specifications, models, documents, software including (without limitation) source codes and other records or information in which the Intellectual Property Rights are owned by Supplier as at the date of the Order that are necessary to enable Buyer to exercise the rights contemplated in this Agreement.

7.7 Supplier agrees that it will promptly communicate the Developments to the Buyer together with all inventions, programs, improvements, processes, standards, techniques, developments, know how, designs or any other original matters whether capable of registration or not associated with the Products which, at any time during the performance of this Agreement or any Order, Supplier might devise or discover. Supplier further agrees that all such Intellectual Property Rights and all rights throughout the world deriving from the same which arise after this Agreement or any Order has terminated shall vest in Buyer absolutely, as Products made for hire.

7.8 Supplier shall, both during the continuance and following the termination of this Agreement for any reason whatsoever, at the request and reasonable expense of Buyer, as Buyer may require, apply for, and do all acts and things necessary to obtain registration or other protection in respect of the Intellectual Property Rights in the Developments in any part of the world. Supplier at its own expense shall and shall use all reasonable endeavours to procure that any necessary third party shall execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to the rights assigned under this clause 7.8.

7.9 Supplier shall not, at any time, whether during the continuance or following the termination of this Agreement for any reason whatsoever, do anything to affect the validity of any of the Intellectual Property Rights in the Developments.

7.10 Each Party acknowledges that all Intellectual Property Rights vesting in either Party prior to the date of the Order are and shall remain the sole property of that Party.

7.11 Supplier undertakes not to:

- 7.11.1 copy Buyer's Intellectual Property Rights or products (other than as authorized under this Agreement) nor otherwise reproduce the same;
- 7.11.2 utilise, customise, modify or create derivative Products of, translate, adapt or vary Buyer's Intellectual Property Rights and products except as expressly permitted in this Agreement or an Order or otherwise agreed in writing between the Parties;
- 7.11.3 disassemble, decompile or reverse engineer Buyer's Intellectual Property Rights and products, except if and to the extent permitted by applicable law; and
- 7.11.4 license or sell any Buyer's Intellectual Property Rights or products, or any part thereof, to any third party.

8. **Quality and Inspection**

- 8.1 Supplier's quality system shall be compliant with the requirements of ISO 9001 or other agreed upon quality standard as Buyer shall notify to Supplier on an Order.
- 8.2 Supplier will maintain detailed quality control and manufacturing sub-assembly and component traceability records for the period of at least seven years from the date of last supply of the Products.
- 8.3 For the purpose of observing the quality and progress of an Order and Supplier's performance of its obligations or of verifying the amount of the price, Buyer and its nominated representatives may at any time during a Business Day and from time to time on three (3) Business Days' notice undertake any inspection of any premises and carry out an audit or check of any aspect of performance of this Agreement by Supplier and shall be allowed to observe work being performed by or on behalf of Supplier or its sub-contractors at any premises owned or used by Supplier in connection with the provision of the Products or any other deliverable in order to verify that Supplier is complying with its obligations under this Agreement. Such observation shall occur during Business Days and during hours that are reasonable under the circumstances (which may be outside working hours). Buyer may appoint an appropriate third party (who shall not be a competitor of Supplier) to act on its behalf in connection with its rights under this clause. In the event cancellation of inspection occurs within the 48 hour window, the Supplier will be responsible for all associated costs incurred (i.e., travel) for the cancelled inspection.
- 8.4 If a discrepancy is found between any amounts confirmed to Buyer by Supplier and the actual amounts for the same period as determined in the course of any inspection made under this clause, Supplier shall reimburse Buyer for all costs reasonably incurred in conducting such inspection including but not limited to travel, accommodation and living expenses of the persons conducting such inspection, for the period of the inspection and the fees and expenses of any third party engaged by Buyer to conduct the inspection.
- 8.5 All costs incurred by Buyer associated with non-conforming material (including freight, handling, material replacement, inspection costs, rework, etc.) may be charged back to the Supplier.
- 8.6 Supplier, at no additional cost to Buyer, shall and shall procure that its sub-contractors shall:
 - 8.6.1 comply with all of Buyer's standard policies that are relevant to the supply of the Products and any other on-site regulations specified by Buyer for personnel working at Buyer's premises or relating to accessing any of Buyer's computer systems. Buyer shall provide Supplier with a copy of such policies and standards as they exist at the Order date, and, whenever they are updated, promptly following issue of the updated versions;
 - 8.6.2 provide the Products in compliance with all requirements of all applicable legislation from time to time in force and which is or may become applicable to the Products. Supplier shall promptly notify Buyer if Supplier is required to make any change to the Products for the purposes of complying with its obligations under this clause;
 - 8.6.3 advise Buyer of and obtain, maintain and observe at its own cost and at no additional charge to Buyer all applicable governmental, statutory, regulatory or other consents, licences, authorisations, waivers or exemptions (including but not limited to third party licences) required by Supplier (unless otherwise agreed in writing by the Parties) in connection with the performance of Supplier's obligations under this Agreement; and
 - 8.6.4 promptly notify Buyer of any health and safety hazards that exist or may arise in connection with the supply of the Products
- 8.7 Supplier may provide notice of not less than twelve (12) months of the discontinuance of the supply of parts or components in the Products and during said notice period Supplier shall procure such reasonable last time quantity as directed by Buyer for such parts or components. Unless otherwise agreed between the Parties, Supplier shall procure and store such parts or components at no additional charge to Buyer.

9. **Traceability**

- 9.1 Under the terms of this Agreement, Supplier shall have and operate a process to ensure that all Products, sub-assemblies and the components contained therein supplied to the Buyer are completely traceable back to manufacturer by batch or lot or date code.
- 9.2 Further Supplier hereby agrees, unless directed otherwise by the Buyer, to procure components through franchised distributors or direct component Suppliers. Supplier agrees to indemnify and hold the Buyer harmless from and against all costs and expenses for the removal, repair or replacement and reinstallation of counterfeit components incorporated into a Product sold by Supplier to the Buyer where the counterfeit component was procured by Supplier from a person or entity other than a franchised distributor or direct component Supplier or other person or entity pre-approved by the Buyer in writing. Supplier will:
 - 9.2.1 require that its Suppliers provide a Certificate of Conformance with each component shipment;
 - 9.2.2 perform incoming inspections of components and paperwork to ensure conformity to Specification; and
 - 9.2.3 maintain and document incoming inspection specifications used for each component used in

manufacturing Products. The foregoing obligations of this **Section 9.2** shall not apply to components consigned or sold to Supplier from the Buyer.

9.3 If components are not purchased from an original equipment manufacturer, franchised distributor or without full traceability and manufacturers certificates, Supplier will ensure that prior written approval has been obtained from the Buyer before using such components and that the approving permit number shall be cross referenced on Supplier's release certification. To obtain the Buyer's approval Supplier may have to, at the Purchases sole option and at Suppliers cost, perform the following:

9.3.1 check with the original equipment manufacturer that the date and batch codes identified on the Certificate of Conformity are genuine; and

9.3.2 complete or arrange for actual component testing on a representative sample of the components to verify their conformance to specification.

9.4 For components purchased from the Buyer Supplier shall maintain the traceability back to the paperwork provided by the Buyer as part of the components transfer.

10. NRE and Tooling

10.1 Any Tools or Tooling purchased from Supplier or manufactured by Supplier, the cost of which forms part of an Order will become the property of Buyer and all right, title and interest in and to any part of Tooling will pass to Buyer as soon as it is acquired or fabricated in accordance with the Order.

10.2 Supplier shall be responsible for the routine maintenance, storage, repair, usage, replacement (within their useful life, fair wear and tear excepted) and calibration of all Tooling in Supplier's possession for performance of this Agreement. If calibration or other specialist requirements are required outside of routine maintenance, repair or usage and not caused by a lack of care or damage by Supplier, then such costs shall be agreed in advance and paid for separately by Buyer

10.3 Buyer's Property furnished to Supplier (where Buyer Property shall include any third party property provided by the Buyer) shall remain the exclusive property of the Buyer. The Buyer may demand possession thereof at any time without notice.

10.4 Supplier shall maintain and keep Buyer's Property in good condition. Buyer will compensate Supplier at its mutually agreed upon rate in writing, for all calibration, maintenance or repair services to Buyer's Property (excluding Tools, Tooling and NRE Items and other than normal preventative maintenance services or services to correct defects caused by Supplier's act or omissions negligence or wilful misconduct). Buyer is not required to compensate Supplier for any such services associated with equipment or tooling owned by Supplier and not intended to be sold or otherwise transferred to Buyer.

10.5 Supplier warrants that Buyer's Property, Tools, Tooling and NRE Items shall not be removed from Supplier's premises except on the prior written permission of Buyer. Supplier may remove Buyer's Property, Tools, Tooling and NRE Items from Supplier's premises for purposes of repair provided that Supplier provides advance notice to Buyer of the anticipated removal.

10.6 Supplier shall keep Buyer's Property, Tools, Tooling and NRE Items separate and apart from its own property and that of other persons and shall clearly mark them as being Buyer's property. Supplier will maintain a system to ensure the adequate control and protection of all furnished property.

10.7 Supplier warrants that Buyer's Property, Tools, Tooling and NRE Items shall not be used by Supplier for any purpose other than for the supply of the Products to Buyer.

10.8 Supplier shall be liable to Buyer for any loss of or damage to Buyer's Property, Tools, Tooling and NRE Items during the time it is in Supplier's possession, custody or control. During such time Supplier shall insure Buyer's Property, Tools, Tooling and NRE Items at full replacement value in the name of and for the benefit of Buyer at Supplier's expense with a reputable insurance provider.

10.9 Supplier waives any lien which it might otherwise have (whether at the date hereof or subsequently) on any of Buyer's Property for work done thereon or otherwise. This condition shall not be construed as a waiver of any other right of recovery of any other charges that may be due to Supplier for such work.

10.10 Supplier shall keep Buyer's Property, Tools, Tooling and NRE Items free of all mortgages, charges or other encumbrances and will procure that any lien over the same is discharged forthwith.

10.11 Supplier shall promptly pay Buyer on demand the full replacement value of any of Buyer's Property, Tools, Tooling and NRE Items which is not provided to Buyer in same condition as originally received by the Supplier satisfactorily accounted for.

11. Liability and Indemnity

11.1 Supplier represents and warrants that it has the authority to perform all its obligations and grant the rights granted pursuant to this Agreement or the order and that such performance or the granting of such rights is not in breach of any Agreement to which it is a party or otherwise bound.

11.2 Supplier shall be liable to Buyer for all damages, costs, expenses and any other sums incurred or charged that Buyer may suffer in connection with any acts or omissions of Supplier under this Agreement or the Order.

11.3 Supplier shall indemnify, keep indemnified and hold harmless Buyer from and against any claims by third parties which are caused by or arise out of or in connection with

11.3.1 Any act or omission of Buyer carried out pursuant to instructions of Supplier; or

11.3.2 Any breach by Supplier of any terms of this Agreement or the Order

11.4 Notwithstanding anything stated herein nothing shall exclude or limit the liability of either Party:

11.4.1 For death or personal injury arising as a result of its negligence or its employees; or

11.4.2 For fraud; or

11.4.3 For any other matter for which it would be illegal for the relevant Party to exclude or limit or to attempt to exclude or limit its liability.

11.5 Subject to clause 11.4, Buyer's aggregate liability under each Order pursuant to this Agreement is limited

TERMS AND CONDITIONS FOR PURCHASE



to the total price which has been paid or is due to be paid under each Order.

11.6 Except as provided in clause 11.4, Buyer will have no liability under or in connection with this Agreement or any order in respect of:

11.6.1 Loss of profits, loss of business, loss of revenue, loss of contracts, loss of goodwill, loss of anticipated earnings or savings (in each case whether direct, indirect, incidental or consequential); or

11.6.2 Loss of use or value or damage of any data or equipment (including software), wasted management, operation or other time (in each case whether direct, indirect, incidental or consequential); or

11.6.3 Any special, indirect, punitive, incidental or consequential loss, howsoever arising.

11.7 Supplier warrants that the Products will not infringe a third party's Intellectual Property Rights. Supplier will indemnify, keep indemnified and hold harmless Buyer and Buyer's customers from, and at its own cost defend any action brought against Buyer or its customers based upon, a claim, legal action or allegation that the Products and/or Intellectual Property Right created by Supplier pursuant to this Agreement or the Order (whether created using Buyer's software or created by any other means whatsoever) infringe the Intellectual Property Rights of a third party and will pay the amount of any settlement or the costs and damages awarded including reasonable legal fees (if any) in such action. Following notice of a claim or a threatened or actual action Supplier shall (without prejudice to Buyer's other rights):

11.7.1 Provide for Buyer and Buyer's customers the right to continue to use the Products and/or Intellectual Property Right; or

11.7.2 Replace or modify the Products and/or Intellectual Property Right so as to make it non-infringing of any third party rights and Supplier shall ensure that such replacement or Modification shall perform in a manner identical in all material respects to the, Products and/or Intellectual Property Right as it was prior to such replacement or Modification.

11.8 Supplier shall purchase, renew and maintain as necessary sufficient public liability, product liability and professional indemnity insurance cover to satisfy Buyer that it is insured to such an extent to enable it to satisfy any indemnities and liabilities incurred under this agreement or any order. Supplier shall provide to Buyer a copy of the relevant insurance policies upon Supplier's request and upon each renewal of such insurance. For the avoidance of doubt, each said insurance policy for the above must provide Supplier with cover of at least \$10,000,000 per event or series of related events.

11.9 Neither Party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure results from an event, circumstances or cause beyond its reasonable control ("**Force Majeure Event**"). Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations. If a Force Majeure Event prevents, hinders or delays Supplier's performance of its obligations for a continuous period of more than 3 months, Buyer may terminate the Agreement immediately by giving written notice to Supplier.

11.10 This clause 11 shall survive termination of the Agreement.

12. **Termination**

12.1 Either Party may by notice in writing, without prejudice to any of its rights herein, terminate this Agreement or an Order forthwith if the other Party commits a material breach of this Agreement or an Order (as the case may be) which is incapable of remedy, or if capable of remedy, within sixty (60) days of the date of dispatch to the other Party of a written request to remedy such breach and the other Party fails to remedy such breach.

12.2 Without prejudice to any of its accrued rights whether arising out of or in connection with this Agreement or an Order either Party shall be entitled to immediately terminate this Agreement or any Order by notice in writing if the other Party is unable to pay its debts, makes a proposal for a voluntary arrangement or convenes a meeting of its creditors to consider such a proposal, becomes subject to any voluntary arrangement, has a receiver, manager, or administrative receiver appointed over any of its assets, undertaking or income, filed at any court where that Party is incorporated.

12.3 There is a Change of Control of the other Party.

12.4 Buyer is entitled to cancel the Order in whole or in part by giving written notice to Supplier at any time prior to delivery of the Products in which event Buyer's sole liability will be to pay to Supplier fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.

12.5 Supplier shall provide or return, as applicable, to Buyer all the Tooling, Developments and any other records or material belonging to the Buyer and all copies of any of them by no later than thirty (30) days from the date of expiration or termination of this Agreement for any cause whatsoever, except as may be required for purposes of audit or any dispute.

12.6 Termination of the Agreement, howsoever arising, shall not affect any of the Parties' rights and remedies that have accrued as at termination.

12.7 Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect.

13. **Non-Solicitation**

13.1 Neither of the Parties shall, during the continuance of the Agreement or for a period of 6 months thereafter, procure or induce or attempt to procure or induce (either on its own behalf or on behalf of any other person, firm or company) any senior employee, officer or other personnel of the other Party who has been directly involved in the Agreement to leave the employment of the other Party.

14. **Confidentiality Obligations**



- 14.1A Party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other Party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a Party to the Agreement. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 14.2 This clause 13 shall survive termination of the Agreement.

15. **Price and Payment**

- 15.1 Supplier shall invoice Buyer the charges for the Products as set out in the Order upon Buyer's written acceptance of the Products. Such invoice shall include: Order number, descriptions of the Products, sizes, quantities, prices and totals.
- 15.2 Buyer shall pay to Supplier the proper and valid invoiced price in the currency of payment as set out in the Order within sixty (60) days of receipt of a correct invoice. All payments shall be made to Supplier at the address shown in the Order. Buyer may make adjustments or withhold payment if Buyer reasonably deems that any invoices are not submitted in accordance with this Agreement, due to any shortages or failures, or for any failure to comply with the requirements of the Order.
- 15.3 The price and any other sums payable by Buyer are gross amounts inclusive of:
- 15.3.1 any value added tax and all other foreign, federal, local, sales or use taxes;
 - 15.3.2 all charges including, but not limited to, packaging material, packing, shipping, loading, carriage, insurance and delivery of the Products to Buyer's specified place of delivery; and
 - 15.3.3 any duties, imposts and levies.

16. **Liquidated Damages**

The Parties agree that if delivery has not occurred by the date which is thirty days following the due date for delivery, Buyer may suffer loss and damage. Accordingly, if delivery has not occurred by the date which is fourteen (14) following the due date for delivery then Supplier will pay to Buyer on demand Liquidated Damages for each full week starting on the first day of the Liquidated Damages Period and ending on the earliest of:

- 16.1 the date of delivery;
- 16.2 expiry of the Liquidated Damages Period; or
- 16.3 termination of the Contract.

The Parties agree that the Liquidated Damages are a genuine negotiated pre-estimate of Buyer's loss resulting from delay in delivery up to the expiry of the Liquidated Damages Period and will not be regarded as penalty provisions. The Parties agree that the Liquidated Damages shall represent Buyer's sole remedy for delay during the Liquidated Damages Period and that the Liquidated Damages do not reflect Buyer's loss for any period of delay beyond the expiry of the Liquidated Damages Period which shall be recoverable, subject to **Section 11** as general damages.

17. **Definitions**

"Acceptance Tests"	means such acceptance tests as proposed by or on behalf of Buyer acting reasonably and issued prior to any such acceptance tests being undertaken to determine whether the Products (both individually and collectively with other Products) are in accordance with its specifications and otherwise meets Buyer's requirements as contemplated by this Agreement.
"Business Days"	any day except a Saturday, Sunday or public/bank holidays on which the banks in London are open for business.
"Buyer Data"	the data supplied or otherwise made available by the Buyer to Supplier or any of Supplier's sub-contractors and the data generated by or stored in the computer systems and telecommunications networks owned or operated by or on behalf of or for the benefit of Buyer to which Supplier or its sub-contractors gain access in connection with the provision of any Products together with any Modifications thereto from time to time made by or on behalf of any person.
"Buyer's Property"	means any dies, tools, patterns, plates, artwork, designs, drawings, specifications, free issue materials or other documents or items in the possession or under the control of Supplier which have either been supplied by the Buyer to Supplier, or in respect of which the Buyer (subject always to Buyer's rights under this Agreement) has paid Supplier the entire NRE Items price.
"Change of Control"	means for any entity, any change in the: <ul style="list-style-type: none">(a) ownership or control (directly or indirectly) of more than fifty per cent (50%) of the voting capital of the entity; or(b) ability (directly or indirectly) to direct the casting of more than fifty per cent (50%) of the votes exercisable at general meetings of the entity; or(c) right (directly or indirectly) to appoint or remove directors of the entity holding a majority of voting rights at meetings of the board of directors of the entity.



"DEFCONs"	means Defence Contract Conditions.
"Developments"	means any Products, development documentation, information, materials, plans, drawings, reports or the like created under or for the purposes of an Order during the course of the performance of an Order.
"DFARS"	means Defence Federal Acquisition Regulation Supplement.
"Documentation"	means the user guides and user manuals (as appropriate) for the Products, regardless of whether in printed and/or machine-readable format.
"FAR"	means Federal Acquisition Regulation.
"Forecast"	means a rolling estimate of Buyer's requirements for Products from current Orders up to a forward looking period of at least nine (9) months and preferably twelve (12) months including the quantities to be manufactured and the requested delivery date.
"Goods"	means the goods (or any part of them) set out in the Order.
"Intellectual Property Rights"	all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in all countries in the world and together with all renewals and extensions.
"Liquidated Damages"	Are 1.0% of the price for the Goods or the Services that are the subject of the delay.
"Liquidated Damages Period"	The period of ten weeks starting on the day following the thirtieth day following the due date for delivery.
"Modification"	means all translations, adaptations, arrangements, derivative Products, developments, enhancements, error corrections, fixes, versions, upgrades, updates, new releases and, without limitation, by reference to the foregoing, modifications (and "Modified" shall be construed accordingly).
"NRE Items"	means any unique labour, tooling, jigs, fixtures or stencils, or other items utilised for the manufacture of Products that are separately priced in an Order for the Products or detailed in a separate NRE Items Order related to the Products.
"Order"	shall mean an order placed by Buyer for Products.
"Services"	means the services to be provided by Supplier as set out in the Order.
"Tools" or "Tooling"	means tools for use with or created pursuant to the Products.
"Products"	shall mean the Goods and/or Services as specified in the Order or any part thereof.