

1. Interpretation

- 1.1. The following words shall have the following meaning unless the context otherwise requires:
- Affiliate** means any person and/or entity which directly or indirectly controls, is controlled by or is under the common control of a party (or person) and in this regard “control” means the power to direct or cause the direction of the management and policies of a person or entity;
- Business Day** means a day other than a Saturday or Sunday or public holiday in England and Wales;
- The Company** means ARRK Europe Limited (company no: 03418673) whose registered address is at: Caldwell Road, Nuneaton, Warwickshire, CV11 4NG;
- Customer** means the person placing the order for the Goods and/or Services with the Company;
- Contract** means each agreement for the supply of Product and/or Services, as referred to in clause 2 below;
- Data Protection Law** means the General Data Protection Regulation (Regulation (EU) 2016/679) (“**GDPR**”) as implemented under English law, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and the Data Protection Act 2018, in each case as amended, replaced or updated from time to time and together with any subordinate or related legislation made under any of the foregoing and relevant industry codes of practice and guidance;
- Delivery** means delivery (or collection) of the Goods as more particularly defined in clause 5.1 below;
- Delivery Address** means the delivery address (if any) specified in the Contract, or otherwise agreed between the parties;
- Goods** means those goods which are the subject of the order placed by the Customer and accepted by the Company in accordance with these Terms and Conditions;
- Insolvency Event** means any event referred to in clause 11.2.3 below;
- Services** means those services required to finish the Goods to the Customer’s specifications and any other services agreed to be provided by the Company to the Customer under a Contract that is not subject to a separate agreement; and
- Terms and Conditions** means these terms and conditions of sale.
- 1.2. References to regulations, statutes or other statutory provisions shall be construed to include references to those regulations, statutes or provisions as amended, re-enacted or modified from time to time and shall include any subordinate legislation under the relevant statute or statutory provision.
- 1.3. The headings in these terms are for ease of reference only and shall not in any way affect their construction or interpretation.
- 1.4. Words denoting the singular include the plural and vice versa; words denoting any one gender include all genders and vice versa, and reference to a person shall include an individual, partnership, body corporate and unincorporated association.
- 1.5. References to any party shall include its personal representatives’ lawful successor in title and permitted, assigns;
- 1.6. The words and phrases “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.

2. Orders and Contracts

- 2.1. These Terms and Conditions shall apply to the supply of all Goods and/or Services by the Company to the Customer to the exclusion of any other terms or conditions produced or referred to by the Customer.
- 2.2. Each order for the Goods shall be deemed to be an offer by the Customer to purchase the Goods upon these Terms and Conditions and shall be accepted entirely at the discretion of the Company
- 2.3. No order of the Customer shall be binding upon the Company until accepted by the Company. Acceptance of an order shall take place, either when the order is expressly accepted by the Company in writing or, the Company commences production of all or part of the Goods ordered, whichever is the earlier. No binding Contract shall exist to supply the Goods unless and until the Customer’s order for such Goods has been accepted by the Company in accordance with this clause.
- 2.4. Once an order has been accepted by the Company in accordance with clause 2.3 a contract for the supply of the Goods which is the subject of the order accepted shall be formed.
- 2.5. Each Contract shall comprise these Terms and Conditions, any order form, and any additional terms agreed in writing between the parties as applicable. The Company shall sell, and the Customer shall purchase, the Goods and/or Services in accordance with the Contract, and the terms of the Contract shall apply to the exclusion of any other terms and conditions of the Customer.
- 2.6. Once an order has been accepted by the Company, no amendments which a Customer wishes to make to that order shall be accepted.
- 2.7. No variation of or addition to these Terms and Conditions will bind the Company or part of any relevant Contract, and no order placed may be cancelled, deferred or varied without the written agreement of a director of the Company.
- 2.8. All quotations issued by the Company shall lapse after 30 calendar days and may be withdrawn at any time, prior 10 days written notice.
- 2.9. The Company reserves the right to alter specifications of the Goods or to remove all or any part of the Goods offered for sale with immediate effect on written notice to the Customer if required to do so by applicable law or due to a defect being brought to its attention. Where a Contract has already been formed under clause 2.4 for the affected Goods, then the Company reserves

the right to either substitute alternative goods of equivalent quality in replacement of them or to refund the Customer such proportion of the price of the Contract which has already been paid by the Customer and which relates to the Goods being altered or withdrawn.

- 2.10. Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods, which is not confirmed in writing by the Company, shall be followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.11. Any typographical, clerical or other error or omission in any sales literature, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3. Price

- 3.1. The price of the Goods shall be as stated in the Contract or, where no price has been quoted, the price listed in the Company's published price list current at the date of delivery. All prices are quoted in pounds sterling, unless otherwise stated.
- 3.2. All prices are exclusive of value added tax and any other taxes, duties and impositions and any packaging, freight/transport costs and other carriage and insurance costs ("delivery charges") all of which shall be paid by the Customer at the same time as, and shall be treated as an additional part of, the price. Where the Company has undertaken to provide or arrange for carriage to the Delivery Address, delivery charges shall be levied in addition to the price unless otherwise expressly agreed by the Company in the Contract.
- 3.3. Any changes occurring between quotation data and order data may affect the final costs. All final quotation costs on any order placed for tooling and/or injection mouldings will only be confirmed against final order information. Orders placed against quotation information, which have changed or subsequently change, should be accepted by the Customer within 48 hours from its reception.
- 3.4. Any subsequent modifications to tooling or injection mouldings from the original order data will be quoted in addition to the original order. Orders placed for modifications must be placed as separate orders and will be dealt with in accordance with these Terms and Conditions.
- 3.5. The Customer shall be responsible for obtaining all required export and import clearances and any other documentation necessary for the delivery of the Goods, except for any matters stated in the Contract to be the responsibility of the Company.
- 3.6. The Company reserves the right to increase the price of the Goods before Delivery by an amount equivalent to any increase after the date of the Contract in the cost to the Company of manufacturing, acquiring, delivering or performing the Goods.

4. Payment terms

- 4.1. Subject to clauses 4.2 and 4.5 payment of the total price under the Contract is due no later than 30 days after the date of the Company's invoice. Any invoice related queries must be made in writing to the Company within 15 days of the invoice date failing which the invoice shall be deemed to have been accepted.
- 4.2. Payment terms for injection mould tooling are strictly one third at time of order (payment is due no later than 14 days after the Company's invoice), one third on delivery of first samples (payment due no later than 30 days after the Company's invoice) and balance upon acceptance of samples to original order information.
- 4.3. The Customer must make all payments without any withholding, deduction, set-off or counterclaim in United Kingdom sterling or in any other currency agreed by the parties, in immediately available funds. Receipts for payment will be issued only upon request.
- 4.4. Time of payment by the Customer is of the essence in each Contract.
- 4.5. The Company reserves the right to vary the payment terms set out above or any other payment terms of credit facilities offered to the Customer for any Contract with immediate effect on written notice to the Customer (including, requiring the Customer to make payment with order) where, the Customer is in breach of these Terms and Conditions or any Contract.
- 4.6. Unless otherwise agreed in writing with the Customer, the Company is entitled to allocate payments received to settle (in full or in part) any sums due from the Customer, whether under the Contract for which the payment was received or any other Contract, in any order or manner the Company determines, and in particular shall be entitled to apply any part payment to settle outstanding interest on overdue amounts, ahead of principal.
- 4.7. If the Customer fails to make any payment when due, without affecting any other rights which it may have, the Company shall be entitled to exercise all or any of the following rights:
- 4.7.1. suspend production and/or deliveries of Goods until paid;
- 4.7.2. deduct outstanding sums from any sums owed by the Company to the Customer under the Contract or otherwise;
- 4.7.3. require the Customer to pay any costs of storage (or a reasonable charge for storage) of undelivered Goods and materials;
- 4.7.4. be paid compensation and charge interest on the overdue amount at the statutory rate and otherwise in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended), or, at the Company's or, where such Act is not

applicable, charge interest on the overdue amount, at an annual rate of 4% above the Bank of England's published Bank Rate from time to time which shall accrue daily (both as well as after any judgment) from the due date until payment in full is received by the Company and shall be compounded monthly;

- 4.7.5. resell any Goods not yet delivered to the Customer;
- 4.7.6. retain any sums paid as deposit for the Goods;
- 4.7.7. demand the return of the Goods in accordance with the provisions of clause 7.3 below.
- 4.8. The Company shall have an action for the price and any other sums due from the Customer notwithstanding that property in the Goods has not passed to the Customer.
- 4.9. Settlements by cheque or credit transfer shall not be deemed paid until the Customer's account is credited with cleared funds.

5. Goods

- 5.1. The quantity and description of the Goods shall be as set out in the Company's written quotation.
- 5.2. The Customer acknowledges that the Goods are supplied to the Customer's own design (for which the Company has no responsibility). The Customer shall ensure that all designs provided by it to the Company comply (and production of the Goods in accordance with the designs will comply) with all relevant health and safety or similar laws.
- 5.3. The Company shall not be deemed to have any knowledge of the purpose for which the Goods are required unless expressly notified by the Customer and a statement describing this purpose is included on the Company's written acknowledgement form.
- 5.4. In any instance where the design is not suitable for manufacture, modifications to the specification may be required by the Company at additional cost to the Customer which the Customer will pay. Before proceeding, the Company will require approval in writing from the Customer that the modifications made to the design are acceptable and clauses 5.2 and 5.3 above shall apply to the modified design.

6. Delivery, Risk, etc.

- 6.1. Delivery dates quoted are based on capacities at time of quotation and may vary significantly with any delay in order placement. Orders can be confirmed verbally with an order number but must be backed up with a faxed confirmation immediately. Failure to confirm the order in writing shall entitle the Company at its sole discretion without notice to suspend further work being undertaken on that project. Goods will not be dispatched without an official copy of the purchase order.
- 6.2. Unless otherwise agreed in the Contract, Goods shall be made available for Delivery by way of collection by the Customer or its agent from the Company's warehouse or location specified in the Contract. Delivery shall take place when they are despatched from the Company's premises. Despatch includes collection of the Goods from the Company's warehouse by the Customer or its carrier at the time the Company notifies the Customer that the Goods are ready for collection.
- 6.3. If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for Delivery then, without prejudice to any other right or remedy available to the Company, the Company may:
 - 6.3.1. store the Goods until actual Delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - 6.3.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the price under the Contract.
- 6.4. No right or title in any packaging, container or transport equipment that accompanies the Goods shall pass to or vest in the Customer. Any such items shall be returned to the Company no later than 30 days after their Delivery in substantially the same condition as when delivered. If any such items are not so returned, the Company may invoice the Customer for the cost of the repair or replacement of them.
- 6.5. The Company will use reasonable endeavors to meet any stated Delivery but dates and times for Delivery shall not be of the essence of the Contract. The Company will not be liable for any loss, damage, cost or expense caused directly or indirectly from the delay in Delivery however caused. The Customer may not terminate the Contract by reason of any delay in Delivery. The Goods may be delivered in advance of the quoted delivery date.
- 6.6. Risk of loss or damage to the Goods shall pass to the Customer upon Delivery. The Customer shall make all necessary arrangements to take Delivery of the Goods whenever tendered by the Company and if the Customer wrongfully fails to take Delivery of the Goods, risk shall nevertheless pass when the Goods are tendered to the Customer.
- 6.7. Any claim that the Goods have not been Delivered must be notified in writing to the Company within five (5) Business Days of the estimated or planned date for Delivery.
- 6.8. The Customer shall inspect the Goods immediately on delivery and shall no later than 5 Business Days after Delivery notify the Company in writing of any shortage in delivery, damage or any other non-conformity with the Contract that ought reasonably to have been apparent on a reasonable inspection of the Goods.
- 6.9. The Customer shall give the Company a reasonable opportunity to inspect the Goods which are the subject of any notified claim. If the Customer fails to do so, the Company will not be liable for the non-delivery, short or damaged delivery and the Customer may not reject the Goods Delivered.

- 6.10. In no event may the Customer reject Goods because not all the Goods ordered are delivered.
- 6.11. Subject to clause 6.12, a failure to notify the Company in accordance with clauses 6.7 and 6.8 will be deemed acceptance of the Goods by the Customer and shall render the Customer liable to payment. The Company reserves the right not to grant refunds for any claims made later than the specified time periods in clauses 6.7 and 6.8 (as applicable).
- 6.12. All claims not notifiable under clauses 6.7 and 6.8 must be notified to the Company no later than 20 Business Days after the Customer first becomes aware of the circumstances giving rise to the claim.
- 6.13. Once the Customer becomes aware that a defect in the Goods may exist, it must not use or supply the Goods, and must take all steps necessary to prevent their use by any of its Customers or other third parties to whom it has supplied the Goods. The Customer shall indemnify and keep the Company indemnified against all liability, losses and costs it incurs as a result of the Customer's breach of this obligation.
- 6.14. The Customer shall be deemed to have accepted the Goods unless notice has been received by the Company that they are not in accordance with the Contract in accordance with clauses 6.9 and 6.10. After acceptance the Customer shall not be entitled to reject the Goods.
- 6.15. The Company may deliver the Goods by separate instalments each of which may be invoiced separately. The failure of the Customer to pay for any installment (or any order) on the due date for payment shall entitle the Company, at its sole discretion, to suspend further deliveries of the Goods pending payment by the Customer and/or treat this contract as repudiated by the Customer. In this instance, the Customer will be notified by the Company.
- 6.16. The Customer must insure the goods in their full replacement value against all risks prudently insured against between risk and property passing and must on demand produce evidence of such insurance to the Company. Until the full price has been paid, the Customer shall hold trust for the Company policy and proceeds of insurance to the extent of the unpaid price.
- 6.17. No returns of the Goods are accepted unless prior written authorisation has been given by the Company (not to be unreasonably withheld). Products which are returned without authorisation will be rejected at the cost of the Customer and credit will not be given. Any return or collection of authorised returns is at the Customer's expense and the Customer shall comply with the Company's returns policy requirements.

7. Property

- 7.1. Title in the Goods shall not pass to the Customer and shall remain with the Company, until the price (and VAT) for those Goods under the Contract and all other sums then due from the Customer under the Contract; and all sums then due from the Customer under any other contracts between the parties have been received in full by the Company.
- 7.2. Until such time as the title in the Goods has passed to the Customer under clause 7.1 the Customer shall:
 - 7.2.1. hold such Goods on a fiduciary basis as the Company's bailee and shall store and mark them in such a way that they are readily identifiable as the Company's property,
 - 7.2.2. not pledge or allow any encumbrance, lien, charge or other interest to arise or be created over the Goods; and
 - 7.2.3. not dispose of or deal with the Goods or any documents of title relating to them or any interest in them; except that the Customer may on its own account use and sell the Goods and pass title to its usual type of Customers in the ordinary course of its trade, provided that the Company's right to use or sell the Goods shall automatically cease upon the occurrence of an Insolvency Event.
- 7.3. If:
 - 7.3.1. payment from the Customer becomes overdue;
 - 7.3.2. the Customer is in breach of any of its obligations under the Contract or any other contract between the Company or any of its Affiliates and the Customer;
 - 7.3.3. the Company or any of its Affiliates exercises any right to terminate the Contract or any other contract between the Company or any of its Affiliates and the Customer; or
 - 7.3.4. an Insolvency Event occurs or the Company reasonably expects that an Insolvency Event is about to occur: then the Company may by written notice terminate the Customer's right (if still subsisting) to use or sell the Goods and/or demand the immediate return of all the Goods which remain in the possession or control of the Customer, and the Customer irrevocably authorises the Company to recover such Goods and any documentation relating to them and, for that purpose, to enter any place where they are held or stored. The Customer shall take all reasonable steps to help the Company recover them. Recovery by the Company of, the Goods shall cancel the Customer's liability to pay the whole or balance of the price for the Goods or any other sums owed by it to the Company or any of the Company's Affiliates or any other rights of the Company under the Contract.
- 7.4. All prototype tooling for services other than export injection moulding remains the property of the Company unless otherwise specified and will be retained by the Company for a period of three months from the original contract completion, after which it will be disposed of, unless otherwise instructed in writing by the Customer.

8. Warranties and Liability for the Goods

- 8.1. Subject to the conditions set out below the Company warrants that the Goods will correspond with the Customer's design and will be free from defect in material and workmanship for a period of one month from delivery and the Services will be performed by appropriately qualified and trained personnel, with reasonable care and diligence.
- 8.2. The above warranty is given by the Company subject to the following conditions:
- 8.2.1. the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;
- 8.2.2. the Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal, working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;
- 8.2.3. the Company shall be under no liability if the total price for the Goods has not been paid in by the due date for payment;
- 8.3. The Company shall be under no liability in respect to the use of the Goods for pressures, temperatures or services not provided for in the Contract or Company's acknowledgement form. The Company should be notified before any such use occurs as inappropriate use may expose operators to serious risk.
- 8.4. Except as expressly provided in these Terms and Conditions, all warranties, conditions or other terms implied by statute or civil law are excluded to the fullest extent permitted by civil law.
- 8.5. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification or comply with the warranty in clause 8.1 is notified to the Company in accordance with these conditions, the Company shall be entitled to repair, rectify or replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price). The replacement of the Goods or any part of those because of any repair made to the Goods shall have a warranty of one month from the delivery. Provided the Company complies with this clause 8.5 it shall have no further liability.
- 8.6. The Company shall not be in breach of clause 8.1 and shall have no obligation under clause 8.5 if the claim results from:
- 8.6.1. fair wear and tear, damage caused by the Customer's or any third party's default, negligence or misuse of the Goods, including the accidental or deliberate destruction of or damage to the Goods;
- 8.6.2. any failure to install, use or maintain the Goods in accordance with the Customer's or manufacturer's instructions;
- 8.6.3. any alterations or modifications or repairs to the Goods other than those carried out by the Customer, or third parties approved by the Company (such approval not to be unreasonably withheld or delayed);
- 8.6.4. any drawing, design, specification or instruction supplied or approved by the Customer.
- 8.7. The Company shall be under no liability under the warranty in clause 8.1 (or any other warranty, condition or guarantee) while any sum is overdue from the Customer to the Company.
- 8.8. The warranty in clauses 8.1 do not extend to: parts, materials or equipment not manufactured by or on behalf of the Company, in respect of which the Customer shall only be entitled to the benefit of any manufacturer's warranty or guarantee that the Company is entitled to transfer to the Customer.

9. Exclusions of and Limits On Liability PLEASE READ

- 9.1. The Company shall only be liable to the Customer in respect of claims notified to the Company in accordance with the Contract and in particular clause 6 above and then its liability will be governed by clauses 8.5 and 8.6.
- 9.2. All warranties, conditions, terms and liabilities express or implied, statutory or otherwise, on the part of the Company, in respect of compliance with descriptions, the quality or the fitness for purpose of the Goods and Services which are not expressly set out in the Contract are excluded to the extent permitted by law.
- 9.3. Without prejudice to the other limitations on the Company's liability in the Contract but subject to clause 9.7 the Company's liability for any claims arising out of or in connection with the Contract, the Goods and/or the Services, however arising shall be limited (in respect of all claims in the aggregate) to a sum equal to the price payable (exclusive of VAT) by the Customer for the Goods and Services under the Contract giving rise to the claims.
- 9.4. Notwithstanding any other provision of the Contract, but subject to clause 9.2, the Company shall have no liability however arising out of or in connection with the Contract and/or the Goods and/or Services for any:
- 9.4.1. direct or indirect loss of or damage to:
- (a) profit;
 - (b) revenue;
 - (c) business;
 - (d) contract;
 - (e) opportunities;
 - (f) anticipated savings;

- (g) data;
- (h) goodwill;
- (i) reputation;
- (j) use;

9.4.2. indirect or consequential loss or damage; or

9.4.3. claim arising out of a claim against the Customer by a third party.

- 9.5. The Customer agrees that each of the sub-clauses in clause 9.4 and each of the sub-paragraphs 9.4.1(a) to 9.4.1(j) above constitute separate terms and the introductory wording of clause 9.4.1 shall be applied to each of them separately. If there is any claim or finding that any such individual sub-clause or sub-paragraph is unenforceable for any reason, such unenforceability shall not affect any other provision within clause 9.4 or otherwise.
- 9.6. The term “however arising” when used or referred to in clause 9 covers all causes and actions giving rise to the liability of the Company arising out of or in connection with the Contract, the Goods and/or Services including (i) whether arising by reason of any misrepresentation (whether made prior to and/or in the Contract) negligence, breach of statutory duty, other tort, repudiation, renunciation or other breach of contract, restitution or otherwise; (ii) whether arising under any indemnity; or (iii) whether caused by any total or partial failure or delay in supply of the Goods or Services or defective Goods or Services.
- 9.7. The exclusions and limitations of liability contained in these Terms and Conditions and in the Contract shall apply regardless of whether the loss or damage was foreseeable or whether the Customer notifies the Company of the possibility of any greater loss or damage but no such exclusion or limitation shall apply to the extent prohibited or limited by law and in particular nothing in the Contract shall affect liability: for death or personal injury caused by negligence to the extent prohibited by the Unfair Contract Terms Act 1977; for fraudulent misrepresentation or other fraud; for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or to the extent prohibited by the Consumer Protection Act 1987.

10. Intellectual Property

- 10.1. The Customer shall have no rights to any intellectual property owned by or licensed to the Company and the Company will have no rights to any intellectual property owned by the Customer. The Company shall have no liability to the Customer in the event that the goods or other items relating to their production (including, without limitation, all tools, casts and models) (“Tools”) or their production, use or duplication, infringe any intellectual property rights of a third party.
- 10.2. All documentation, know how, samples and other items relating to the production of the goods shall remain the Company’s property, shall be treated as confidential and shall not be used, copied, reproduced or disclosed to any person without the Company’s prior written consent.
- 10.3. If any claim is made against the Company that the goods or tools infringe or that their use, duplication, or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with the claim, or paid or agreed to be paid by the Company in settlement of the claim and the Customer shall at its own cost give the Company all reasonable assistance for the purposes of any such proceedings or negotiations.

11. Termination

- 11.1. The Company may terminate the Contract (in whole or in part) without liability at any time upon giving not less than one month’s written notice to the Customer.
- 11.2. Without affecting its other rights and remedies, the Company shall be entitled to terminate the Contract without liability to the Customer by giving written notice with immediate effect to the Customer if the Customer:
- 11.2.1. is in breach of any provision of, or purports to cancel, the Contract;
 - 11.2.2. is in breach of any contract entered into with any of the Company’s Affiliates;
 - 11.2.3. has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the Customer is incorporated, resident or carries on business or the Company reasonably apprehends that any of the aforesaid events is about to occur in relation to the Customer and notifies the Customer accordingly.
- 11.3. Any termination however caused shall not affect any right or liabilities which have accrued prior to the time of termination or the continuance in force of any provision of the Contract which expressly or by implication is intended to come into or continue in force after termination.

12. Consequences of termination

- 12.1. Upon termination however caused:

- 12.1.1. the Customer shall immediately return any information or materials in its possession or under its control which belong to or were supplied by the Company; and
- 12.1.2. all sums due or falling due to the Company or any of the Company's Affiliates from the Customer under any subsisting contract either between the Customer and the Company or, between the Customer and any of the Company's Affiliates, shall immediately become due and payable by the Customer to the Company on demand notwithstanding not withstanding any previous agreement or arrangement to the contrary. The Customer acknowledges that the Company is authorised to collect sums owed by the Customer to its Affiliates on their behalf for this purpose.

13. Export Terms

- 13.1. In these terms, "Incoterms" means the International Rules for the Interpretation of Trade Terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of the Incoterms shall have the same meaning in the Contract, but if there is any conflict between the provisions of Incoterms and the Contract, the latter shall prevail.
- 13.2. Where the Goods are supplied for export from the United Kingdom, this clause shall apply notwithstanding any other provision of these Terms and Conditions unless otherwise agreed in writing. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 13.3. Delivery of the Goods for export shall be at the Company's premises on an ex-works basis and the risk of damage to or loss of the goods shall pass to the Customer upon Delivery. The Customer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which ought reasonably to have been apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 13.4. The Company shall have no liability for any claim in respect of any damage to the Goods during transit.
- 13.5. Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a bank acceptable to the Company or at the Company's direction by direct automated transfer to the Company's bank. The Customer shall be liable for all bank charges raised by the Customer or the Company's bank for the payment of amounts due to the Company.

14. Indemnity

- 14.1. The Customer undertakes with the Company to indemnify and keep the Company indemnified and to hold harmless the Company from and against all liabilities, losses, damages, costs, charges and expenses (including without limitation legal fees and expenses on a full indemnity basis), actions, claims and demands incurred by or brought against the Company and arising directly or indirectly out of the production of the Goods by the Company in compliance with the Customer's designs or any breach by the Customer of any of its obligations under any Contract with the Company.

15. Data Protection

- 15.1. "Controller", "data subject", "data subject access request", "personal data", "process", "processor" and "supervisory authority" shall have the meanings set out in the Data Protection Law.
- 15.2. The Customer acknowledges that the Company may process personal data relating to the Customer or employees of the Customer, in connection with each Contract (such as contact details) for legal, administrative and management purposes relying on the lawful bases of the Company's legitimate interest in managing its business and to perform its contractual obligations. Please see the Company's privacy policy for further details on its website www.arrkeurope.com.
- 15.3. The Company and the Customer will be acting as separate data controllers in respect of any personal data shared and processed between them and as such, each will comply with the provisions and obligations imposed on data controllers under Data Protection Law at all times.
- 15.4. Where the Customer is providing personal data on another data subject to the Company, the Customer warrants that the personal data supplied will be accurate, that the Customer can lawfully transfer that personal data to The Company and that the Customer has informed that data subject of the disclosure to and processing of his/her personal information by the Company, in the manner and detail required under Data Protection Law.
- 15.5. The Company may make searches with credit reference agencies about the Customer and directors of the Customer and these credit reference agencies will keep a record of that search.

16. General

- 16.1. Any notice required or permitted to be given by either party to the other under these conditions shall be in writing and may be served by leaving it at, or by sending it by pre-paid first class post or recorded delivery to, the intended recipient's address. The address of a party for service of notices is the address set out in the Contract or such other address as a party may designate by notice given in accordance with this clause. A notice is deemed to be received when left at the recipient's address or, if sent by pre-paid first class post or recorded delivery, 48 hours from the date of posting. If such deemed receipt is not within business

hours (being between 9.00 am and 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to be received when business hours next commence.

- 16.2. These Terms and Conditions, together with those set out in the Contract, and any other documents entered into pursuant to the Contract, constitute the entire agreement and understanding of the parties and supersede any previous agreement or understanding between the parties with respect to the arrangements contemplated by or referred to in these terms and the Contract.
- 16.3. The Customer acknowledges and agrees that: in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made), or understanding of any person (whether party to the Contract or not) which is not expressly set out in these terms and/or the Contract; and the only remedy available to it for breach of any statement, representation or other term that is expressly set out in the Contract shall be for breach of contract under the terms of the Contract.
- 16.4. No waiver by the Company of any breach of the contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.5. If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the provisions of these conditions and the remainder of the provision in question shall not be affected.
- 16.6. The Company may at any time assign, transfer, charge or deal in any other manner with any of its rights hereunder or, license or sub-contract all or part of its obligations under any Contract without the Customer's consent. The Customer may not assign charge or otherwise dispose of any of its rights under any Contract without the Company's prior written consent.
- 16.7. Drawings, documents and any other materials of any kind provided by the Customer to the Company in connection with the Goods shall only be retained by the Company for three months from the date of delivery of the Goods. Should the Customer require the return of the drawings, documents and any other materials they should notify the Company in writing.
- 16.8. All Affiliates of the Company (each being a "TP") shall each be entitled, in its own right pursuant to the Contracts (Rights of Third Parties) Act 1999 ("TP Act"), to enforce every defence and limitation and indemnity expressed to be in favour of the Company under these Terms and Conditions and the Contract to the extent determined by the Company in its absolute discretion from time to time, as if such defences and limitations were expressed to be for the benefit of the relevant TP. Neither party shall be required to notify or obtain the consent of any TP in order to rescind or vary the Contract or any provision of it. Except as referred to in this clause, no provision of a Contract shall be enforceable pursuant to the TP Act by any person who is not a party to it.

17. Force Majeure

- 17.1. The Company shall not be liable in any way for loss, damage or expense arising directly or indirectly from any hindrance, failure or delay in performing any obligation under the Contract caused by the actions or omissions of the Customer, its employees, agents, contractors or other third parties providing goods or services to or acquiring them from the Customer or by any circumstance beyond the Company's reasonable control, which shall include war (or other action of military forces), terrorism, riot, civil commotion, sabotage, vandalism, accident, breakdown or damage to machinery or equipment, acts of God, fire, flood, severe weather conditions, pandemics, epidemics, extreme traffic congestion, strike, lock-out or other industrial disputes (whether or not involving employees of the Company) or shortage of materials at the market rates existing when the relevant Contract is made, legislative or administrative interference or national crisis (each an "Event of Force Majeure"). If an Event of Force Majeure continues for more than a period of 60 days the Company shall be entitled at its discretion to perform, suspend performance of, and/or terminate the Contract.

18. Law and Jurisdiction

- 18.1. These Terms and Conditions and each Contract shall be governed and construed in accordance with the laws of England. For the Company's benefit the Customer submits to the exclusive jurisdiction of the English courts and agrees (without limiting the Company's rights to bring proceedings in any other courts of competent jurisdiction, whether concurrently or not) that the English courts shall have jurisdiction to settle any claim or dispute in relation to any relevant contract and that their judgements will be binding, conclusive and enforceable by the courts of other jurisdictions.