



SUNSTONE

SUPPLY CONDITIONS

The Purchaser's attention is drawn to Supply Conditions: 3.6, 3.10, 3.11, 3.12(b), 4.4, 4.5, 4.8, 6.6, 7.4 and 11.

Please read these Supply Conditions carefully before placing an Order. By placing an Order you agree to be bound by these Supply Conditions. If you do not accept these Supply Conditions then you will not be able to make an Order.

You should keep a copy of these Supply Conditions for future reference. Sunstone reserves the right to modify these Supply Conditions from time to time (see clause 14.7).

1. INTERPRETATION

1.1 **Definitions.** In these Supply Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Commencement Date: the date the Supply Contract commences, as set out in the Supply Contract Details.

Completion Date: the estimated date of completion of the Services, as set out in the Supply Contract Details.

Data Controller: has the meaning set out in section 1(1) of the Data Protection Act 1998.

Data Subject: an individual who is the subject of Personal Data.

Delivery Date: the estimated date of delivery of the Goods, as set out in the Supply Contract Details.

Delivery Location: the address for delivery of the Goods and/or the provision of Services, as set out in the Supply Contract Details.

Document: includes without limitation any written document, maintenance manual, operations manual, training video, instructions, drawing, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form supplied by Sunstone to the Purchaser in respect of or in connection with the Goods and/or Services.

Force Majeure Event: has the meaning given in clause 13.

Goods: the goods (or any part of them) set out in the Supply Contract Details.

Incoterm: The incoterm specified in the Supply Contract Details, having the same meaning as the Incoterms rules 2010-*ICC Official Rules for the Interpretation of Trade Issues*, published in September 2010 by the International Chamber of Commerce, as amended from time to time.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for



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passing off or unfair competition, rights in designs, rights in computer and other operating software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world in or associated with the Goods and/or Services.

Mandatory Policies: Sunstone's mandatory policies for contracts set out on its Website, as amended from time to time.

Maintenance Contract: any agreement between Sunstone and the Purchaser for the maintenance of any Goods sold by Sunstone to the Purchaser.

Minimum Quantity: the minimum quantity of Goods, as set out in the Supply Contract Details.

Order: the Purchaser's order for the Goods and/or Services, as set out in the Purchaser's purchase order form.

Payment Schedule: the schedule of payments for the Goods and/or Services, as set out in the Supply Contract Details.

Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Purchaser is the Data Controller and in relation which Sunstone is providing Goods and/or Services under the Supply Contract.

Purchaser: the person or firm who purchases the Goods and/or Services from Sunstone, as set out in the Supply Contract Details.

Purchaser's Carrier: has the meaning given in clause 3.3.

Services: the services set out in the Supply Contract Details.

Services Start Date: the estimated date on which the provision of Services will start, as set out in the Supply Contract Details.

Specification: any specification for the Goods and/or Services, including any related plans, designs and drawings, that is supplied to Sunstone by the Purchaser, or produced by Sunstone and agreed in writing by the Purchaser.

Sunstone: Sunstone IP Systems Limited (registered in England and Wales with company number 07547704) whose registered office is at Unit 1, Altira Business Park, The Boulevard, Herne Bay, Kent, England, CT6 6GZ.

Sunstone's Bank Account: Sunstone's bank account details, as set out in the Supply Contract Details.

Supply Conditions: the terms and conditions set out in this document (together with any documents referred to in it) as amended from time to time by Sunstone.



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Supply Contract: the contract between Sunstone and the Purchaser for the sale and purchase of the Goods and/or Services in accordance with the Supply Contract Details, these Supply Conditions and the Mandatory Policies.

Warranty Period: the warranty period as set out in the Supply Contract Details.

Website: Sunstone's website: <http://sunstone-systems.com>

1.2 Construction. In these Supply Conditions, the following rules apply:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors or permitted assigns.

(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 These Supply Conditions apply to the Supply Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 A quotation for any Goods and/or Services provided by Sunstone, together with these Supply Conditions, shall constitute the terms upon which the Goods and/or Services are to be sold to the Purchaser but shall not constitute an offer from Sunstone to the Purchaser. A quotation shall only be valid for a period of twenty Business Days from its date of issue unless withdrawn by Sunstone.

2.3 The Order constitutes an offer by the Purchaser to purchase the Goods and/or Services in accordance with these Supply Conditions and the Purchaser shall purchase the Minimum Quantity of the Goods. The Purchaser shall ensure that the terms of the Order and any relevant Specification are complete and accurate, and shall specify any changes or inaccuracies.

2.4 The Order shall only be deemed to be accepted when Sunstone issues a written acceptance of the Order together with the Supply Contract, at which point the Supply Contract shall come into existence. The Purchaser shall have no right to cancel an Order or reschedule delivery, other than provided for in Clause 3 below, unless agreed otherwise in writing by Sunstone.

2.5 The Supply Contract (together with any Maintenance Contract) constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Sunstone which is not set out in the Supply Contract. Any samples, drawings, descriptive matter including prices, or



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advertising issued by Sunstone and any descriptions or illustrations contained in Sunstone's catalogues or brochures or on Sunstone's Website are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Supply Contract or any other contract between Sunstone and the Purchaser for the sale of the Goods and/or Services.

3. DELIVERY OF GOODS AND COMPLETION OF SERVICES

3.1 For delivery of Goods outside of the UK, subject to receipt of clear instructions from the Purchaser, Sunstone shall use reasonable endeavours to deliver the Goods to the Delivery Location, being an agreed place in line with the Incoterm set out in the Supply Contract Details, and with such insurance as prescribed by the Incoterm on or by the Delivery Date.

3.2 For delivery of Goods within the UK, subject to receipt of clear instructions from the Purchaser, Sunstone shall use reasonable endeavours to deliver the Goods to the Delivery Location on or by the Delivery Date.

3.3 Alternatively and if agreed by the parties, the Purchaser may organise collection of the Goods from Sunstone's premises on the Delivery Date and onward transportation of the Goods. The Purchaser must inform Sunstone of this intention on the Order. The Purchaser's nominated carrier (**Purchaser's Carrier**) shall be deemed to be the Purchaser's agent. Delivery shall be completed on the completion of the loading of the Goods onto the Purchaser's Carrier's vehicle at Sunstone's premises. The Purchaser shall be responsible for ensuring the Goods are insured and Sunstone shall have no liability in relation to any damage to the Goods whilst in the Purchaser's Carrier's possession.

3.4 Sunstone shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, relevant Purchaser and Sunstone's reference numbers, the type and quantity of the Goods (and the code number of the Goods, where applicable), any maintenance manual and/or operations manual (where applicable), any training video (where applicable) and special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(b) if Sunstone requires the Purchaser to return any packaging materials to Sunstone, that fact is clearly stated on the delivery note. The Purchaser shall make any such packaging materials available for collection at such times as Sunstone shall reasonably request. Returns of packaging materials shall be at Sunstone's expense.

3.5 Sunstone shall use reasonable endeavours to complete the provision of Services by the Completion Date.

3.6 The Purchaser shall, at its own cost, obtain such import and/or export licences and other licences, permissions and consents as Sunstone may reasonably require from time to time in order to supply the Goods and/or Services and comply with its obligations under the Supply Contract, and the Purchaser shall make those licences and consents available to Sunstone prior to the Delivery Date. The Purchaser shall indemnify Sunstone against any failure to comply with its obligations under this clause 3.6.

3.7 Subject to clause 3.3, unless otherwise agreed between the parties, delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location or loading of the Goods at the Delivery Location if the Goods are to be collected by the Purchaser or the Purchaser's Carrier, or in the case of Services on completion of the provision of such Services. On completion of the provision of Services, the Purchaser shall have the opportunity to inspect any



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installation or other works carried out by Sunstone and shall be required to sign an 'Project Sign-Off Sheet' to confirm completion of the Services.

3.8 Sunstone shall use reasonable endeavours to notify the Purchaser of any delay that, in Sunstone's opinion, may affect the Delivery Date, Services Start Date and/or Completion Date, and Sunstone reserves the right to unilaterally change such dates at any time up to seven Business Days before the Delivery Date or Services Start Date (whichever is earlier) by giving written notice to the Purchaser.

3.9 The Delivery Date and Completion Date are approximate only, and time of delivery of the Goods and time of completion of the Services shall not be made of the essence by notice or otherwise. Estimated lead times quoted shall date from receipt and acceptance by Sunstone of an Order.

3.10 If Sunstone fails to deliver the Goods or make the Goods available for collection by the Delivery Date or start the Services by the Services Start Date, or complete the provision of Services by the Completion Date, its liability shall be limited to the costs and expenses incurred by the Purchaser in obtaining replacement goods and/or services of similar description and quality in the cheapest market available, less the price of the Goods and/or Services (as applicable).

3.11 Sunstone shall have no liability for any failure to deliver the Goods or make the Goods available for collection by the Delivery Date, or start the Services by the Services Start Date, or complete the Services by the Completion Date, to the extent that such failure is caused by a Force Majeure Event or the Purchaser's failure to provide Sunstone with all relevant licences, permissions and consents, adequate delivery instructions or any other information or instructions that are relevant to the supply of the Goods and/or Services.

3.12 If the Purchaser fails to take delivery of the Goods on the Delivery Date then, except where such failure or delay is caused by a Force Majeure Event or Sunstone's failure to comply with its obligations under the Supply Contract:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the Delivery Date; and

(b) Sunstone shall store the Goods until delivery takes place, and charge the Purchaser for all related costs and expenses (including labour, materials, overheads, storage and insurance) in respect of which the Purchaser shall indemnify Sunstone.

3.13 If ten Business Days after the Delivery Date the Purchaser has not taken delivery, Sunstone may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage, insurance and selling costs, account to the Purchaser for any excess over the price of the Goods or charge the Purchaser for any shortfall below the price of the Goods.

3.14 The Purchaser shall not be entitled to reject the Goods if Sunstone delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the price of the Goods on receipt of notice from the Purchaser that the wrong quantity of Goods was delivered. The Purchaser must notify Sunstone of any shortage/surplus in writing within seven Business Days of the date of delivery.

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



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4. QUALITY OF GOODS

4.1 Sunstone warrants that on manufacture, and for the Warranty Period, the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification; and
- (b) be free from material defects in design, material and workmanship.

4.2 Subject to clause 4.3, if:

- (a) the Purchaser gives notice in writing to Sunstone (and carrier if there has been damage in transit) during the relevant Warranty Period within five Business Days of delivery that some or all of the Goods do not comply with the warranty set out in clause 4.1; and
- (b) Sunstone is given a reasonable opportunity of examining such Goods; and
- (c) the Purchaser (if asked to do so by Sunstone) returns such Goods to Sunstone's place of business at Sunstone's cost, quoting the return materials authorisation number obtained from Sunstone prior to the return of the Goods,

Sunstone shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

4.3 Sunstone shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 if:

- (a) the Purchaser fails to notify Sunstone in accordance with clause 4.2(a); or
- (b) the Purchaser makes any further use of such Goods after giving notice in accordance with clause 4.2(a); or
- (c) the defect arises because the Purchaser failed to follow Sunstone's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods including, without limitation, any instructions contained in any maintenance manual, operations manual, or training video provided by Sunstone to the Purchaser, or (if there are none) good trade practice; or
- (d) the defect arises as a result of Sunstone following any Specification supplied by the Purchaser; or
- (e) the Purchaser alters or repairs such Goods without the written consent of Sunstone (unless the Purchaser carries out any maintenance in accordance with the terms any Maintenance Contract); or
- (f) the defect arises as a result of damage incurred during transportation which is effected by the Purchaser's Carrier; or
- (g) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (h) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory and regulatory standards.



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4.4 Except as provided in this clause 4, Sunstone shall have no liability to the Purchaser in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

4.5 Except as set out in these Supply Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Supply Contract.

4.6 These Supply Conditions shall apply to any repaired or replacement Goods supplied by Sunstone.

4.7 Sunstone reserves the right to charge the Purchaser for the transportation, testing and/or refurbishing of any Goods returned and subsequently deemed to be either no default found or found to be out of warranty.

4.8 Sunstone gives no condition or warranty that Goods are suitable for a particular purpose. The Purchaser must satisfy itself in this respect and be solely responsible that the Goods are suitable for its requirements. Any suggestions or recommendations given by Sunstone do not amount to a representation, condition or warranty.

5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Purchaser on completion of delivery.

5.2 Title to the Goods shall not pass to the Purchaser until Sunstone has received payment in full (in cash or cleared funds) for:

(a) the Goods; and

(b) all other sums which are or which become due to Sunstone for sales of the Goods or any other products to the Purchaser.

5.3 Until title to the Goods has passed to the Purchaser, the Purchaser shall:

(a) hold the Goods on a fiduciary basis as Sunstone's bailee;

(b) store the Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as Sunstone's property;

(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date on which delivery is completed;

(e) notify Sunstone immediately if it becomes subject to any of the events listed in clause 10.2; and

(f) give Sunstone such information relating to the Goods as Sunstone may require from time to time.



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5.4 If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any of the events listed in clause 10.2, or Sunstone reasonably believes that any such event is about to happen and notifies the Purchaser accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Sunstone may have, Sunstone may at any time require the Purchaser to deliver up the Goods and, if the Purchaser fails to do so promptly, the Purchaser irrevocably licences Sunstone, its officers, employees and agents, to enter any premises of the Purchaser or (to the extent permitted by law) the premises of any third party where the Goods are stored in order to inspect and mark and/or recover them.

5.5 This clause 5 shall survive termination only to the extent it relates to Sunstone's rights. The Purchaser shall have no rights under this clause following termination.

6. SUPPLY OF SERVICES

6.1 Sunstone shall supply Services to the Purchaser in accordance with any Specification as detailed in the Order and the Supply Contract Details in all material respects. In the event of a conflict in the Specification detailed in the Order and the Supply Contract Details, the Supply Contract Details shall prevail.

6.2 Sunstone reserves the right to amend any Specification if necessary to comply with applicable law or regulatory requirements, and if the amendment will materially affect the nature or quality of the Services, Sunstone shall notify the Purchaser as soon as reasonably practicable.

6.3 Sunstone warrants to the Purchaser that the Services will be provided using reasonable care and skill.

6.4 If Sunstone is providing personnel to the Purchaser to carry out such Services, Sunstone reserves the right to substitute such personnel (provided the substitution has, in Sunstone's opinion, the necessary qualifications or experience to carry out the Services). Nothing in these Supply Conditions shall create a contract between the Purchaser and personnel supplied by Sunstone.

6.5 The Purchaser shall:

- (a) co-operate with Sunstone in all matters relating to Services;
- (b) at its own cost, provide Sunstone with such access, facilities, information and materials as Sunstone may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (c) at its own cost, obtain and maintain any necessary licences, permissions and consents which may be required for the Services and make these available to Sunstone before the date on which the Services are due to start;
- (d) at its own cost, comply with all applicable laws, including health and safety laws; and
- (e) keep all materials, equipment and other property of Sunstone or its personnel at the Purchaser's premises, or other location where the Services are to be provided by Sunstone, in safe custody at its own risk, maintain any such items in good condition, and not dispose of or use any such items other than in accordance with Sunstone's written instructions or authorisation.



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6.6 The Purchaser shall indemnify Sunstone against any failure to comply with its obligations under clause 6.5.

7. PRICE AND PAYMENT

7.1 The price of the Goods and/or Services shall be the price set out in the Supply Contract Details. If no price is given, the price shall be the price provided as part of any quotation provided by Sunstone to the Purchaser, or otherwise set out in Sunstone's published price list in force as at the date of delivery if no quotation has been provided. Volume price quotations are only applicable to the quantities offered.

7.2 Sunstone may, by giving notice to the Purchaser at any time up to twenty Business Days before the Delivery Date or the Services Start Date, increase the price of the Goods and/or Services to reflect any increase in the cost of the Goods and/or Services that is due to:

(a) any factor beyond Sunstone's control (including without limitation foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Purchaser to change the Delivery Date(s), Delivery Location, extent of the Services, Services Start Date, Completion Date, quantities or types of Goods ordered, or the Specification; or

(c) any delay caused by any instructions of the Purchaser or failure of the Purchaser to give Sunstone adequate or accurate information or instructions.

7.3 The price of the Goods and/or Services is exclusive of amounts in respect of value added tax (**VAT**) or any other tax or duty thereon. The Purchaser shall, on receipt of a valid VAT invoice from Sunstone, pay to Sunstone such additional amounts in respect of VAT, tax or duty as are chargeable on the supply of the Goods and/or Services at the prevailing rate.

7.4 All costs and charges in relation to or arising from any credit facility, bank charges (including any charges incurred by Sunstone and/or the Purchaser in agreeing any letters of credit), currency conversion, packaging, loading, unloading, transport of the Goods (including courier fees, import/export licences and customs duties) and insurance, shall be at the cost of the Purchaser and paid in addition to the price for the Goods and/or Services. Sunstone reserves the right to charge the Purchaser on a full indemnity basis for any such costs and charges or in attempting to recover or recovery of any monies due under the Supply Contract.

7.5 Sunstone reserves the right to require the Purchaser to provide it with an irrevocable letter of credit in terms satisfactory to Sunstone and confirmed by a bank in the United Kingdom acceptable to Sunstone prior to the Delivery Date or the Services Start Date, whichever is earlier. Sunstone shall be entitled to immediate cash payment on presentation of the necessary documents to a bank in the United Kingdom.

7.6 Time of payment is of the essence and no payment shall be deemed to have been received until Sunstone has received cleared funds.

7.7 Goods and/or Services shall be paid in pounds sterling in cleared funds on or before the due dates set out in the Payment Schedule or, if otherwise agreed with Sunstone in writing, the Purchaser shall pay the invoice (in respect of the Goods and/or Services or instalments thereof if applicable) in full and in cleared funds within thirty days of the date of the



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invoice. If no due dates for payments are set out in the Payment Schedule and, in the absence of an alternative written agreement between Sunstone and the Purchaser, Goods shall be paid for in full before the Delivery Date.

7.8 Sunstone shall invoice the Purchaser separately from time to time for any additional costs and charges arising under the Supply Contract pursuant to clause 7.4 or otherwise. The Purchaser shall pay the invoice in full and in cleared funds within thirty days of the date of the invoice.

7.9 All payments in accordance with this clause 7 shall be made by direct bank transfer into Sunstone's Bank Account, unless otherwise agreed with Sunstone in writing.

7.10 The Purchaser shall pay all amounts due under the Supply Contract in full without any deduction or withholding except as required by law and the Purchaser shall not be entitled to assert any credit, set-off or counterclaim against Sunstone in order to justify withholding payment of any such amount in whole or in part. Sunstone may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Purchaser against any amount payable by Sunstone to the Purchaser.

7.11 If the Purchaser fails to make any payment due to Sunstone under the Supply Contract by the due date for payment (**due date**), then the Purchaser shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Purchaser shall pay the interest together with the overdue amount. Sunstone reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

7.12 Sunstone may suspend delivery of the Goods and/or the provision of Services, or terminate the Supply Contract in respect of any undelivered Goods and/or Services in the event that the Purchaser fails to pay any sum due to Sunstone by the due date.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 All and any Intellectual Property Rights in the Goods and/or Services and any Document shall belong to and vest solely in Sunstone or its licensors.

8.2 Sunstone grants to the Purchaser free of charge a non-exclusive, worldwide licence in respect of such rights to the extent necessary to enable the Purchaser to make reasonable use of the Goods and/or Services and Documents.

8.3 The Purchaser shall not remove, suppress or modify any trade mark, copyright or other proprietary marking belonging to Sunstone from the Goods and/or Services and/or any Document and shall not reverse compile engineer, tamper with, or in any way alter or modify the Goods and/or Services and/or the Documents without the prior written consent of Sunstone.

8.4 The Purchaser shall promptly and fully notify Sunstone of:

(a) any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Purchaser's notice; and



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(b) any claim by any third party that comes to the Purchaser's notice that the sale or advertisement of the Goods and/or Services and/or any Document infringes the rights of any person.

8.5 The Purchaser agrees (at Sunstone's request and reasonable expense) to do all such things as may be reasonably required to assist Sunstone in taking or resisting any proceedings in relation to any infringement or claim referred to in clause 8.4.

9. CONFIDENTIALITY

9.1 Any information exchanged in the course of the supply of Goods and/or Services under the Supply Contract shall be treated as strictly confidential by Sunstone and the Purchaser, and each party agrees not to use such information for its own purposes (other than implementation of the Supply Contract), nor without the prior written consent of the other party, disclose to any third party (except professional advisers or as may be required by any law or any legal or regulatory authority) any such information, unless such information is public knowledge already at the time of disclosure, or subsequently becomes public knowledge other than by breach of the Supply Contract, or subsequently becomes lawfully into the possession of either Sunstone or the Purchaser party from a third party. Sunstone and the Purchaser shall each use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

9.2 This clause 9 shall survive termination of the Supply Contract.

10. TERMINATION

10.1 If any of the events listed in clause 10.2 occur, or Sunstone reasonably believes that the Purchaser is about to become subject to any of them and notifies the Purchaser accordingly, then, without limiting any other right or remedy available to Sunstone, Sunstone may cancel or suspend all further deliveries of Goods and/or the provision of Services under the Supply Contract or under any other contract between the Purchaser and Sunstone without incurring any liability to the Purchaser.

10.2 For the purposes of clause 10.1, the relevant events are:

(a) the Purchaser commits a material breach of any terms of the Supply Contract which is not remedied within five Business Days after receipt of notice in writing to do so; or

(b) the Purchaser 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or

(c) the Purchaser commences 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 its creditors; or

(d) (being an individual) the Purchaser is the subject of a bankruptcy petition or order; or



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(e) a creditor or encumbrancer of the Purchaser 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 fourteen days; or

(f) (being a company) 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 Purchaser; or

(g) (being a company) a floating charge holder over the assets of the Purchaser has become entitled to appoint or has appointed an administrative receiver; or

(h) a person becomes entitled to appoint a receiver over the assets of the Purchaser or a receiver is appointed over the assets of the Purchaser; or

(i) any event occurs, or proceedings are taken, with respect to the Purchaser in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2(a) to clause 10.2(h) (inclusive); or

(j) the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or

(k) (being an individual) the Purchaser dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

10.3 Sunstone may terminate the Supply Contract at any time upon giving to the Purchaser not less than one month's notice.

10.4 Upon termination, all outstanding sums payable by the Purchaser to Sunstone under the Supply Contract or any other contract between the Purchaser and Sunstone shall become immediately due and the Purchaser shall return any materials, equipment and property owned by Sunstone or its personnel to Sunstone immediately within seven days of termination.

11. LIMITATION OF LIABILITY

11.1 Nothing in these Supply Conditions shall limit or exclude Sunstone's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

(d) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1979; or

(e) defective products under the Consumer Protection Act 1987; or

(f) any matter in respect of which it would be unlawful for Sunstone to exclude or restrict liability.



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11.2 Subject to clause 11.1, Sunstone shall not be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

- (a) any loss of profit; or
- (b) loss of sales or business; or
- (c) loss of agreements or contracts; or
- (d) loss of use or corruption of software, data or information; or
- (e) loss of or damage to equipment or property; or
- (f) loss of or damage to goodwill; or
- (g) any losses that may result from a deliberate breach of the Supply Contract by Sunstone, its employees, agents or subcontractors; or
- (h) any indirect or consequential loss.

11.3 Subject to clause 11.2, Sunstone's total liability to the Purchaser in respect of all other losses arising under or in connection with the Supply Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Supply Contract by Sunstone, its employees, agents or subcontractors, shall not exceed the total price paid in respect of the Goods and/or Services (to the exclusion of any other payments that may be due from the Purchaser to Sunstone under the Supply Contract).

11.4 The terms implied by sections 13 to 15 of the Sales of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Supply Contract.

11.5 This clause 11 shall survive termination of the Supply Contract.

12. DATA PROTECTION AND DATA PROCESSING

12.1 The Purchaser and Sunstone acknowledge that for the purposes of the Data Protection Act 1998 (**DPA**), the Purchaser is the Data Controller and Sunstone is the data processor in respect of any Personal Data (as defined in the DPA).

12.2 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments and take reasonable steps to prevent the accidental loss or destruction of such Personal Data.

12.3 The Purchaser acknowledges that Sunstone is reliant on the Purchaser for direction as to the extent to which Sunstone is entitled to use and process the Personal Data. Consequently, Sunstone will not be liable for any claim brought by a Data Subject arising from any action or omission by Sunstone, to the extent that such action or omission resulted directly from the Purchaser's instructions.



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12.4 Sunstone may authorise a third party to process the Personal Data provided that the third party's contract is on terms which are substantially the same as those set out in this agreement as regards Data Protection.

12.5 Sunstone will use the Personal Data given by the Purchaser to:

- (a) supply the Goods and/or Services;
- (b) process payments;
- (c) give information to the Purchaser about the Goods and/or Services; and
- (d) give information about other goods and/or services that Sunstone or a member of its group provides (but the Purchaser may stop receiving this at any time by contacting Sunstone).

12.6 Sunstone will hold and process personal information in accordance with any privacy policy or similar policy set out on its Website, as amended from time to time.

13. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Supply Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

14. GENERAL

14.1 Assignment and subcontracting.

- (a) Sunstone may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Supply Contract.
- (b) The Purchaser may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Supply Contract without the prior written consent of Sunstone.

14.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Supply Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such



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other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2(a); if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if sent by email, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3 Severance. If any provision or part-provision of the Supply Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Supply Contract shall not be affected.

14.4 Waiver. A waiver of any right or remedy under the Supply Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Supply Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14.5 No partnership. Nothing in the Supply Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

14.6 Third party rights. A person who is not a party to the Supply Contract shall not have any rights under or in connection with it.

14.7 Variation. Any variation to the Supply Contract shall be in writing and signed on behalf of each party save that Sunstone shall be able to amend the Supply Conditions upon giving to the Purchaser not less than one month's notice.

14.8 Governing law and jurisdiction. The Supply Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England. The international rules for the interpretation of Incoterms prepared by the International Chamber of Commerce shall apply but where they conflict with these Supply Conditions, these Supply Conditions shall prevail.

14.9 Language. This agreement is drafted in the English language. If this agreement is translated into any other language, the English language version shall prevail. Any notice given under or in connection with this agreement shall be in the English language. All other documents provided under or in connection with this agreement shall be in the English language, or accompanied by a certified English translation.

Version: July 2017