

The customer's attention is drawn in particular to the provisions of clause 8.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

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

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11 (paragraph on Variations).

Contract: the contract between Foremost and the Customer for the sale and purchase of the Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from Foremost Pro Ltd or its agent or representative.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Foremost: Foremost Pro Ltd (registered in England and Wales with company number 08711807, with its registered office at Unit 3-4 Oldlands Way, Southern Cross Trading Estate, Bognor Regis, West Sussex, England, PO22 9SE.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the Foremost's quotation, or overleaf, as the case may be.

Services: the services (or any part of them) set out in the Order.

Specification: any specification for the Goods and/or Services, including any related plans and drawings, that is agreed by the Customer and Foremost.

Warranty Period: has the meaning given in clause 5.1.

1.2 Interpretation:

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

A reference to a **party** includes its successors and permitted assigns.

A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** excludes fax but not email.

2. BASIS OF CONTRACT

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

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

2.3 The Order shall only be deemed to be accepted when Foremost issues a written acceptance of the Order, at which point the Contract shall come into existence.

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

2.5 Any samples, drawings or advertising produced by Foremost and any illustrations contained in Foremost's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods and/or Services given by Foremost shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

2.7 Foremost, at its sole discretion and subject to Foremost's written authorisation, may allow the Customer to cancel all or a portion of its Order for Goods or Services. If so authorised, the Customer's cancellation of any Order for Goods is subject to Foremost's then current Order cancellation policy and restocking charges. All returned Goods must be in new and unused condition. For authorised cancellations of Orders for Services, the Customer shall pay Foremost in full for all fully-burdened direct and indirect costs incurred by Foremost for Services performed, plus a reasonable profit thereon. Foremost will notify the Customer of the amount owed, which amount shall be immediately due and payable to Foremost. Other than as authorised as aforementioned all other Orders are non-cancellable and non-returnable and the Customer is liable for payment of the full Order price for same.

3. GOODS & SERVICES

3.1 The Goods are described in Foremost's promotional materials (including its website and Foremost's written quotations), as may be modified by any applicable Specification.

3.2 The Customer shall indemnify Foremost against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Foremost in connection with any claim made against Foremost for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Foremost's use of the Specification. This

clause 3.2 shall survive termination of the Contract.

3.3 Foremost reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and Foremost shall notify the Customer in any such event.

4. DELIVERY

4.1 Foremost shall ensure that:

- a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, details that may expressly be required by Foremost, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- b) if Foremost requires the Customer to return any packaging materials to Foremost, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Foremost shall reasonably request. Returns of packaging materials shall be at Foremost's expense.

4.2 Foremost shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Foremost notifies the Customer that the Goods are ready.

4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Any dates quoted for delivery of Goods and/or Services are approximate only, and the time of delivery is not of the essence. Foremost shall not be liable for any delay in delivery that is caused by a Force Majeure Event or the Customer's failure to provide Foremost with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and/or Services.

4.5 If Foremost fails to deliver the Goods and/or Services, its liability shall be limited to the costs and expenses incurred by the Customer 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. Foremost shall have no liability for any failure to deliver the Goods and/or Services to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Foremost with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and/or Services.

4.6 If the Customer fails to accept delivery of the Goods within 5 Business Days of Foremost notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Foremost's failure to comply with its obligations under the Contract in respect of the Goods:

- a. delivery of the Goods shall be deemed to have been completed at 9:00 am on the third Business Day after the day on which

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Foremost notified the Customer that the Goods were ready; and

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

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

4.8 If Foremost delivers up to and including 10.0% more or less than the quantity of Goods ordered the customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, Foremost shall make a pro rata adjustment to the invoice for the Goods.

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

5. LIMITED WARRANTY

5.1 Foremost warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the following shall apply, subject to clause 5.7 below:

- a. The Goods and/or Services shall conform in all material respects with their description and any applicable Specification;
- b. the Goods shall be free from material defects in design, material and workmanship;
- c. the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- d. the Services shall be performed using reasonable care & skill.

5.2 Subject to clause 5.3, if:

- a. the Customer gives notice in writing to Foremost during the Warranty Period within a reasonable time of discovery that some or all of the Goods or Services do not comply with the warranty set out in clause 5.1;
- b. Foremost is given a reasonable opportunity of examining such Goods or Services; and
- c. the Customer (if asked to do so by Foremost) returns such Goods to Foremost place of business at the Customer's cost,

Foremost shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods; or in the case of Services re-perform the relevant Services or refund the price of the Services.

5.3 Foremost shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- a. the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- b. the defect arises because the Customer failed to follow Foremost's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- c. the defect arises as a result of Foremost following any drawing, design or specification supplied by the Customer;
- d. the Customer alters or repairs such Goods without the written consent of Foremost;
- e. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- f. the Goods differ from their description and any applicable Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, Foremost shall have no liability to the Customer in respect of the Goods' or Services' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods and re-performed Services supplied by Foremost.

5.7 In the case of Goods other than those of Foremost's own manufacture, Foremost makes no warranties, express, statutory, or implied.

5.8 Other than for defective Goods which are dealt with under and in accordance with clauses 5.1 to 5.7, the Customer does not have a right to return the Goods following their delivery in accordance with clause 4.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- a. Foremost receives payment in full (in cash or cleared funds) for the Goods and any other goods that Foremost has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
- b. the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

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

- a. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Foremost's property;

b. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

c. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

d. notify Foremost immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and

e. give Foremost such information as Foremost may reasonably require from time to time relating to (a) the Goods; and (b) the ongoing financial position of the Customer.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Foremost receives payment for the Goods. However, if the Customer resells the Goods before that time:

- a. it does so as principal and not as Foremost's agent; and
- b. title to the Goods shall pass from Foremost to the Customer immediately before the time at which resale by the Customer occurs.

6.5 At any time before title to the Goods passes to the Customer, Foremost may:

- a. by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
- b. require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

7.1 The price of the Goods and/or Services shall be the price set out in the Order, or, if no price is quoted, the price set out in Foremost's published price list in force as at the date of delivery.

7.2 The price of the Goods and Services:

- a. excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to Foremost at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- b. excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.3 Foremost may invoice the Customer: (a) for the Goods on or at any time after the completion of delivery; and (b) for Services on completion of the Services' performance or at such intervals as may be stated in Foremost's quotation or as agreed with the Customer.

7.4 The Customer shall pay each invoice submitted by Foremost:

- a. within 30 days of the date of the invoice (or, in the case of a customer with a credit account, within 30 days from the

end of the month in which the invoice was issued); and

- b. in full and in cleared funds to a bank account nominated in writing by Foremost, and
- c. time for payment shall be of the essence of the Contract.

7.5 If the Customer fails to make a payment due to Foremost under the Contract by the due date, then, without limiting Foremost's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. LIMITATION OF LIABILITY

8.1 Foremost has obtained insurance cover in respect of certain aspect of its own legal liability for individual claims not exceeding £1,000,000. The limits and exclusions in this clause reflect the insurance cover Foremost has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.

8.2 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- a. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- b. fraud or fraudulent misrepresentation;
- c. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- d. defective products under the Consumer Protection Act 1987.

8.4 Subject to clause 8.3, Foremost's total liability to the Customer shall not exceed £50,000.

8.5 Subject to clause 8.3, the following types of loss are wholly excluded:

- a. loss of profits;
- b. loss of sales or business;
- c. loss of agreements or contracts;
- d. loss of anticipated savings;
- e. loss of use or corruption of software, data or information;
- f. loss of or damage to goodwill; and
- g. indirect or consequential loss.

8.6 This clause 8 shall survive termination of the Contract.

9. TERMINATION

9.1 Without limiting its other rights or remedies, Foremost may terminate this Contract with immediate effect by giving written notice to the Customer if:

- a. the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fifteen business days of that party being notified in writing to do so;
- b. the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- c. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- d. the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

9.2 Without limiting its other rights or remedies, Foremost may suspend provision of the Goods and/or Services under the Contract or any other contract between the Customer and Foremost if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or Foremost reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, Foremost may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

9.4 On termination of the Contract for any reason the Customer shall immediately pay to Foremost all of Foremost's outstanding unpaid invoices and interest and, in respect of Goods supplied and Services performed, but for which no invoice has been submitted, Foremost shall submit an invoice, which shall be payable by the Customer immediately on receipt.

9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. FORCE MAJEURE

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for three months, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

11. GENERAL

Assignment and other dealings. Foremost may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Foremost.

Confidentiality. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by this paragraph. Each party may disclose the other party's confidential information: (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause; and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

Entire agreement. The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

Waiver. Except as set out in clause 2.4, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted,

but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this paragraph, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

Notices. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). Any notice shall be deemed to have been received (a) if delivered by hand, at the time the notice is left at the proper address; and (b) if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am on the two Business Day after posting. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

Third party rights. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

Governing law & Jurisdiction. The Contract, and any dispute or CLAIM (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.