

EXARTIC LTD

Terms and Conditions

1. INTERPRETATION

1.1 Definitions. In these Terms, the following definitions apply:

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

Company: Exartic Limited registered in England and Wales with company number 09982576.

Contract: the contract between the Company and the Customer for the supply of Products and/or Services in accordance with these Terms.

Customer: the person or firm who purchases the Products and/or Services from the Company.

Delivery Location: has the meaning set out in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 14.1.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and 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

Materials: has the meaning set out in clause 8.1.6.

Order: the Customer's order for the supply of Products and/or Services, as set out in the Customer's purchase order form, its written acceptance of the Company's quotation, or overleaf, as the case may be.

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

Product Specification: any specification for the Products and/or Services, including any relevant plans or drawings, that is agreed in writing by the Customer and the Company.

Services: the services supplied by the Company to the Customer as set out in the Specification below.

Specification: the description or specification for the Services provided in writing by the Company to the Customer.

Terms: these terms and conditions as amended from time to time in accordance with clause 15.7.

Warranty Period: has the meaning set out in clause 5.2.

1.2 **Construction.** In these Terms, the following rules apply:

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

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory 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;

1.2.4 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; and

1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

2. **BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Customer to purchase Products and/or Services in accordance with these Terms.

2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence.

2.3 The Customer acknowledges that these Terms are accepted and shall become binding on it on placing an Order.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Products or illustrations or descriptions of the Services contained in the Company's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products described in them. They shall not form part of the Contract or have any contractual force.

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

2.7 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.

2.8 All of these Terms shall apply to the supply of both Products and Services except where application to one or the other is specified.

3. PRODUCTS

- 3.1 The Products are described in the Company's catalogue and on its website.
- 3.2 The Company reserves the right to amend the specification of the Products if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF PRODUCTS

- 4.1 The Company shall ensure that if the Company requires the Customer to return any packaging material to the Company, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Company shall reasonably request. Returns of packaging materials shall be at the Company's expense.
- 4.2 Unless otherwise agreed, the Company shall deliver the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Products are ready for delivery.
- 4.3 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.5 If the Company fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products. The Company shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Company with adequate delivery instructions for the Products or any relevant instruction related to the supply of the Products.
- 4.6 If the Customer fails to accept or take delivery of the Products within two Business Days of the Company notifying the Customer that the Products are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Products:
 - 4.6.1 delivery of the Products shall be deemed to have been completed at 9.00 am on the second Business Day following the day on which the Company notifies the Customer that the Products were ready; and
 - 4.6.2 the Company shall store the Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If two Business Days after the Company notified the Customer that the Products were ready for delivery the Customer has not accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Products.

- 4.8 The Customer shall not be entitled to reject the Products if the Company delivers up to and including 5 per cent more or less than the quantity of Products ordered.
- 4.9 The Company may deliver the Products 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. QUALITY OF PRODUCTS

- 5.1 The Company warrants that on delivery the Products shall:
- 5.1.1 conform in all material respects with their description; and
 - 5.1.2 be free from material defects in design, material and workmanship.
- 5.2 In addition the Company shall pass to the Customer the benefit of any manufacturer's warranty in respect of the Products for a period of 30 days from delivery (**Warranty Period**).
- 5.3 Subject to clause 5.4, if:
- 5.3.1 the Customer gives notice in writing within three Business Days of discovery that some or all of the Products do not comply with the warranty set out in clause 5.1;
 - 5.3.2 the Company is given a reasonable opportunity of examining such Products; and
 - 5.3.3 the Customer (if asked to do so by the Company) returns such Products to the Company's place of business at the Customer's cost,
- the Company shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.
- 5.4 The Company shall not be liable for the Products' failure to comply with the warranty in clause 5.1 if:
- 5.4.1 the Customer makes any further use of such Products after giving a notice in accordance with clause 5.3;
 - 5.4.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
 - 5.4.3 the defect arises as a result of the Company following any drawing, design or Product Specification supplied by the Customer;
 - 5.4.4 the Customer alters or repairs such Products without the written consent of the Company;
 - 5.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - 5.4.6 the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.5 Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.1.

5.6 The terms of these Terms shall apply to any repaired or replacement Products supplied by the Company under clause 5.3.

6. TITLE AND RISK

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

6.2 Title to the Products shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for the Products and any other goods or Services that the Company has supplied to the Customer, in which case title to the Products shall pass at the time of payment of all such sums.

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

6.3.1 store the Products separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;

6.3.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;

6.3.4 notify the Company immediately if it becomes subject to any of the events listed in clause 13.2.2 to clause 13.2.13; and

6.3.5 give the Company such information relating to the Products as the Company may require from time to time.

6.4 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 13.2.2 to clause 13.2.13, then, without limiting any other right or remedy the Company may have the Company may at any time:

6.4.1 require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and

6.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

7. SUPPLY OF SERVICES

7.1 The Company shall use all reasonable endeavours to meet any performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.2 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.

7.3 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

8.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Specification is complete and accurate;

8.1.2 co-operate with the Company in all matters relating to the Services;

8.1.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;

8.1.4 provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

8.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and

8.1.6 keep and maintain all materials, equipment, documents and other property of the Company (**Materials**) at the Customer's premises in safe custody at its own risk, maintain the Materials in good condition until returned to the Company, and not dispose of or use the Materials other than in accordance with the Company's written instructions or authorisation.

8.2 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Default**):

8.2.1 the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Default, and to rely on the Default to relieve it from the performance of any of its obligations to the extent the Default prevents or delays the Company's performance of any of its obligations;

8.2.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8.2; and

8.2.3 the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Default.

9. CHARGES AND PAYMENT

9.1 The price for Products shall be the price set out in the Order or, if no price is quoted, the price set out in the Company's published price list as at the date of delivery. The price of the Products is exclusive of all costs and charges of packaging, insurance, transport of the Products, which shall be paid by the Customer when it pays for the Products.

- 9.2 The charges for Services shall be the prices set out in the Order and shall not include any expenses reasonably incurred in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, for the cost of services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials, which shall be charged to the Customer in addition.
- 9.3 The Company reserves the right to:
- 9.3.1 increase the price, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost to the Company that is due to:
- 9.3.1.1 any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.3.1.2 any request by the Customer to change the delivery date(s), quantities or types of Products or Services ordered, or the Specification; or
- 9.3.1.3 any delay caused by any instructions of the Customer in respect of the Products or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Products.
- 9.4 In respect of Products, the Company shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Company shall invoice the Customer on weekly in arrears.
- 9.5 The Customer shall pay each invoice submitted by the Company:
- 9.5.1 within 14 days of the date of the invoice; and
- 9.5.2 in full and in cleared funds to a bank account nominated in writing by the Company, and
- time for payment shall be of the essence of the Contract.
- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.
- 9.7 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.

10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.

10.3 All Materials are the exclusive property of the Company.

11. CONFIDENTIALITY

The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to it by the Company, its employees, agents or subcontractors, and any other confidential information concerning the Company's business, its products and services which the Customer may obtain. The Customer shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging its obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Customer may also disclose such Company's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

12. LIMITATION OF LIABILITY

12.1 Nothing in these Terms shall limit or exclude the Company's liability for:

12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

12.1.2 fraud or fraudulent misrepresentation;

12.1.3 breach of the terms implied by section 2 of the Supply of Products and Services Act 1982 (title and quiet possession);

12.1.4 breach of the terms implied by section 12 of the Sale of Products Act 1979 (title and quiet possession); or

12.1.5 defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:

- 12.2.1 the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
- 12.2.1.1 loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; or
 - 12.2.1.2 any losses/costs incurred for downtime in respect of the supply of Products by the Company to the Customer; and
- 12.2.2 the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the aggregate charges paid by the Customer in the year preceding a Claim.
- 12.3 The terms implied by sections 13 to 15 of the Sale of Products Act 1979 and the terms implied by sections 3 to 5 of the Supply of Products and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

- 13.1 Without limiting its other rights or remedies the Company may terminate the Contract by giving the Customer not less than two months' written notice.
- 13.2 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 13.2.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
 - 13.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of sections 123 and 268 of the Insolvency Act 1986;
 - 13.2.3 the other party 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;
 - 13.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party;
 - 13.2.5 the other party is the subject of a bankruptcy petition or order;
 - 13.2.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

- 13.2.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
 - 13.2.8 the holder of a qualifying charge over the assets of the other party has become entitled to appoint or has appointed an administrative receiver;
 - 13.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 13.2.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.2 to clause 13.2.9 (inclusive);
 - 13.2.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - 13.2.12 the other party's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - 13.2.13 the other party dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 13.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 13.4 Without limiting its other rights or remedies, the Company may suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between the Customer and the Company if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.2.2 to clause 13.2.13, or the Company reasonably believes that the Customer is about to become subject to any of them.
- 13.5 On termination of the Contract for any reason:
- 13.5.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 13.5.2 the Customer shall return all of the Materials. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - 13.5.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

13.5.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. FORCE MAJEURE

14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14.2 The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

14.3 If the Force Majeure Event prevents the Company from providing any of the Services and/or Products for more than four weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15. GENERAL

15.1 Assignment and other dealings.

15.1.1 The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

15.1.2 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2 Notices.

15.2.1 Any notice or other communication given to a party under or in connection with this 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 other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

15.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

15.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

15.3 **Severance.**

15.3.1 If any provision or part-provision of the 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, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

15.3.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

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

15.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

15.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

15.7 **Variation.** Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Company.

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

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