

CAMCON AUTO LIMITED

TERMS AND CONDITIONS FOR

ENGINEERING SERVICES

Effective 1 January 2017

Camcon Auto and its suppliers agree that the following terms and conditions, govern the purchase delivery of engineering services and related goods from the supplier to Camcon Auto. These terms and conditions and associated documents are issued on behalf of Camcon Auto (or Camcon Auto Affiliate) identified on the face of the Purchase Order as the "Buyer" and will apply to all orders issued to you as Supplier of engineering services and related goods. Purchase Orders and other associated purchasing documents will be valid without signature if issued by Buyer through its computer system or other electronic means. The reference to Purchase Order herein shall include a blanket Purchase Order or similar documents issued by Buyer to Supplier and which incorporate these terms and conditions.

1. INTERPRETATION

(a) In these terms and conditions the following words have the following meanings unless inconsistent with the context:

"Affiliates" means Buyer's or Supplier's (as relevant) subsidiaries, its holding company and any subsidiaries of such holding company. A company is a "subsidiary" of another company, its "holding company", if that other company:

- (a) holds 50% or more of the voting rights in it, or
 - (b) holds 50% or more of the shares or stock in it; or
 - (c) is a member of it and has the right to appoint or remove a majority of its board of directors; or
 - (d) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it,
- or if it is a subsidiary of a company that is itself a subsidiary of that other company;

"Background IPR" means the Intellectual Property Rights of either Buyer or Supplier which are in existence as at the Commencement Date or which are developed independently of the Services;

"Business Day" means any day other than a Saturday or Sunday or a public or bank holiday in England;

"Business Hours" means 9.00 a.m. to 5.00 p.m. inclusive on any Business Day;

"Buyer" means the purchaser of the Services, as identified on the face of the Purchase Order;

"Buyer Confidentiality Agreements" means an agreement to be entered into between Buyer and each of the Guest Engineers relating to Confidential Information, in the form provided by Buyer from time to time;

"Commencement Date" means the date of the Purchase Order;

"Confidential Information" means secret or confidential commercial, financial, marketing, technical or other information (including, without limitation, information in or relating to engine model programmes, product plans, business plans, marketing plans, research and development projects or Buyer's finances), know-how, trade secrets and other information in any form or medium of Buyer and/or Buyer's Affiliate whether disclosed orally or in writing before or after the Commencement Date, together with any reproductions of such information in any form or medium or any part(s) of this information;

“Design Data” means all records created by Supplier or its Guest Engineers while performing the Services and/or providing Related Goods including, but not limited to, design concept sheets, planning drawings, specifications, specification tenders, engineering reports (including test reports), formulae and data held on any electronic medium, including specifications and shape related data;

“Engine” means Buyer and/or Buyer Affiliate engine development programme(s) which is/are the subject of the Services;

“Fees” means the fees for the Services as set out in the Purchase Order;

“Force Majeure” means any cause preventing either Buyer or Supplier from performing any or all of its obligations which arises from or is attributable to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of governmental or supra-national authority, outbreak of hostilities, national emergency, an act of terrorism, riots, civil commotion, fire, explosion, or flood;

“Foreground IPR” means any Intellectual Property Rights, including without limitation inventions, designs, discoveries, improvements, concepts, techniques, processes and know-how, whether or not patentable, which arise or are created by Buyer and/or or Supplier (and/or Supplier’s sub- contractors) during the term of the Purchase Order and in connection with the Services or as a result thereof;

“Guest Engineers” means the engineering and other personnel employed by Supplier that shall work at Buyer’s sites whilst providing the Services and who shall have appropriate and sufficient knowledge, experience, technical skills (including professional degrees, licences, memberships or certifications) sufficient for them to perform their duties under the Purchase Order;

“Intellectual Property Rights” means any patent, utility model, registered design, unregistered design right, copyright (including any right in computer software), database right or topography right and any trade secret, trade mark, service mark, trade or business name, goodwill and rights in confidential information and know-how and any associated or similar rights (whether or not any of these are registered and in all cases including applications for registration of any such thing

“Parts” means the various parts and components (or part thereof) as designed by Supplier in the performance of the Services;

“Person” includes any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of state or joint venture;

“Purchase Order” means any purchase order, in Buyer’s standard form, issued by Buyer for the Services incorporating these terms and conditions;

“Related Goods” means any goods (including tooling) provided by Supplier to Buyer in relation to the Services;

“Supplier” means the provider of the Services, as identified on the face of the Purchase Order;

“Services” means the engineering services described or referred to in the Purchase Order (or as varied pursuant to a Purchase Order) including the provision of Related Goods as part of those Services;

“Service Point” means Supplier’s premises where the Services will substantially be performed;

“Statement(s) of Work” means the Engineering Statement of Work (“ESOW”) or other document containing Buyer’s requirements or specifications issued by Buyer in relation to the Services;

“Supplemental Terms” means Buyer’s supplemental terms which contain specific requirements to address specific services, goods or local market requirements, as issued by Buyer from time to time and available from Buyer on request; and

“Tooling” means any tooling supplied to Buyer in connection with the Services (including Buyer-owned Tooling as defined in clause 29);

(b) In these terms and conditions, unless the context requires otherwise, the following rules apply:

- (i) headings are inserted for convenience only and shall not affect the interpretation or construction of these terms and conditions;
- (ii) words in the singular shall include the plural and vice versa;
- (iii) a reference to Buyer or Supplier includes its personal representatives, successors or permitted assigns;
- (iv) 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; and
- (v) 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.
- (vi) any Supplemental Terms and conditions identified in these terms and conditions shall hereby be incorporated by reference.

2. OFFER, ACCEPTANCE

(a) A Purchase Order is an offer to Supplier by Buyer to enter into the purchase and supply agreement it describes. Supplier's express agreement to a Purchase Order or commencement of work thereunder will constitute acceptance of the offer.

(b) Acceptance is expressly limited to the terms of Buyer's offer. Any modifications or other terms proposed by Supplier are expressly rejected by Buyer and shall not become part of the agreement in the absence of Buyer's express written acceptance. Any variation to these terms and conditions shall have no effect unless expressly agreed in writing by Buyer and Supplier.

3. SERVICES AND OBLIGATIONS OF SELLER

(a) Supplier will provide the Services to Buyer upon these terms and conditions, the terms of the Purchase Order, any applicable Supplemental Terms and the terms of the Statement of Work. In the event of a conflict between the terms of the Purchase Order and/or any Supplemental Terms and/or these terms and conditions and/or the Statement of Work then to the extent of such conflict, the conflict shall be resolved in the following order of priority: (i) the Purchase Order; (ii) the Supplemental Terms (regardless of whether any Supplemental Terms are referenced on the Purchase Order); (iii) these terms and conditions; and (iv) the Statement of Work (regardless of whether the Statement of Work is referenced on the Purchase Order).

(b) While providing the Services Supplier agrees:

(i) to keep within the costs constraints of the Fees; and

(ii) to meet all the performance requirements as notified by Buyer from time to time (including, but not limited to, any service levels or other requirements detailed in a Statement of Work).

(c) Supplier will provide the Services, and any Design Data and Related Goods in accordance with the timing and locations notified by Buyer to Supplier, or if no timings are provided, within a reasonable time. In the event that the timing for the Services has not been (or is reasonably likely not to be) met, Supplier shall notify Buyer in writing and Buyer shall, acting reasonably, determine whether an extension to the timing is appropriate. Unless agreed otherwise in writing by Buyer, time shall be of the essence in respect of the delivery of the Services. If Supplier fails to perform the Services by the applicable dates specified in the Purchase Order or Statement of Work, Buyer shall, without limiting its other rights or remedies, have one or more of the following rights (to be exercised in Buyer's sole discretion):

(i) to terminate the Purchase Order with immediate effect by giving written notice to Supplier;

(ii) to refuse to accept any subsequent performance of the Services which Supplier attempts to make;

(iii) to recover from Supplier any costs incurred by Buyer in obtaining substitute services from a third party;

(iv) where Buyer has paid in advance for Services that have not been provided by Supplier, to have such sums immediately refunded by Supplier; and/or

(v) to claim damages for any additional costs, losses or expenses incurred by Buyer which are in any way attributable to Supplier's failure to meet such dates or comply with the warranties herein.

(d) Supplier agrees that the Services will be provided by employees of Supplier and that Supplier shall ensure that such employees comply with the confidentiality requirements detailed in clause 11(b). If Supplier wishes to use any independent contractors, sub-contractors or agents in provision of the Services, it will first provide Buyer written notice listing the independent contractors, sub-contractors or agents who it wishes to engage. If Buyer objects to the use of or identity of any independent contractor, sub-contractor or agent then Supplier shall not appoint such person in relation to the provision of the Services. Supplier must comply with the provisions of this clause 3(d) when making

any changes to the identity of the independent contractors, sub-contractors or agents that it wishes to engage.

(e) Supplier shall provide adequate training of its personnel, and/or its Guest Engineers (as appropriate) to ensure the Services are provided in accordance with these terms and conditions and Supplier shall inform all persons engaged in relation to the provision of the Services of relevant legislation and shall ensure that such persons comply with such legislation in relation to the carrying out of their duties.

(f) Supplier agrees to prepare and present to Buyer all reports, presentations and documentation which are requested by Buyer in the format and in the timescales as reasonably stipulated by Buyer. The feedback may include, but not be limited to, the results or findings, recommendations, justifications, confirmation of compliance to Buyer standards and benefits to be derived, both of a technical and commercial nature.

(g) Buyer may, at any time, by way of written notice to Supplier, require any changes to the scope, duration or specifications of the Services and/or the Design Data and/or the Related Goods. If any changes made by Buyer in accordance with this clause affect the cost or timing of the Services, Buyer and Supplier will negotiate in good faith a reasonable equitable adjustment in the Fees and/or delivery schedules as applicable. Supplier will not make any change in the Services unless done pursuant to Buyer's express written instructions or Buyer's written approval. The terms of the Purchase Order will thus be varied to the extent of the agreed written amendment. For the avoidance of doubt, Buyer shall not be liable for any increase in the Fees due to a change in the Services unless Buyer has agreed such increase in writing and has amended the Purchase Order to reflect the increase in Fees.

(h) Supplier will ensure that: (i) any Design Data and Related Goods are properly packed and secured in such a manner as to enable them to reach their destination in a fully functioning and undamaged condition; and (ii) it packs, marks and ships the any Design Data and Related Goods in accordance with all of Buyer's standards (as may otherwise be notified to Supplier by Buyer from time to time).

(i) Supplier agrees that it shall supply any Design Data and Related Goods in accordance with the delivery terms.

(j) Full title to any Related Goods and Design Data supplied to Buyer shall transfer to Buyer at the point of delivery of the Related Goods.

(k) The Design Data and Related Goods shall remain at the risk of the Supplier until delivery of the Design Data and Related Goods in accordance with these terms and conditions, whereupon risk in, and unencumbered title to, the Design Data and Related Goods shall pass to Buyer. Supplier agrees that it shall not retain any lien on or over the Design Data or Related Goods (or any part thereof), and to the extent that any lien is implied under law, Supplier hereby waives any and all rights to enforce any such lien on or over the Design Data or Related Goods (or any part thereof).

4. GUEST ENGINEERS

(a) In order to facilitate the proposed work and for the better provision of the Services, Supplier may propose to Buyer that the services of Guest Engineers be utilised. As part of such proposal Supplier shall provide Buyer with details of the identity, qualifications and experience of each such proposed Guest Engineer.

(b) The Guest Engineers may be sent to Buyer's premises with the prior written approval of Buyer, such approval not to be unreasonably withheld or delayed.

(c) Supplier shall supervise, or cause its Affiliates to supervise its Guest Engineers in relation to working hours, working environment and safety of engineers and to be responsible as an employer to such Guest Engineers for all obligations under the applicable employment and regulations in the United Kingdom, or of such country in which the Guest Engineers are located. Supplier is solely responsible for the payment of: all wages, salary, or other compensation; all income and employment related taxes; all fringe benefits and for reimbursement of expenses incurred by Guest Engineers, including, but not limited to all expenses for travelling to Buyer or third party facilities. Buyer shall have no obligation to reimburse Guest Engineers for any business expenses, unless Buyer has previously approved such expenses in writing.

(d) If Buyer reasonably considers that any Guest Engineer is not adequately performing the Services, pursuant to the Purchase Order, Buyer may request a replacement. Buyer and Supplier agree that upon receipt of such a request they shall meet and enter into good faith discussions regarding the request and in the event the request is upheld Supplier will replace (without any compensation from Buyer) the said Guest Engineer as promptly as is reasonably practicable for the provision of the Services.

(e) Supplier shall ensure that all Guest Engineers comply with all of Buyer's procedures and policies, including without limitation, site, security, confidentiality and health and safety policies and the reasonable instructions of Buyer, whilst on Buyer's premises.

(f) Supplier shall procure that Guest Engineers will sign individual Buyer Confidentiality Agreements upon Buyer's request.

5. WARRANTY

(a) Supplier represents and warrants that it will provide the Services with the experience, diligence, due skill and care expected of an experienced and best practice company in the provision of the type of services as are within the scope of the Purchase Order (including a Statement of Work), and shall carry out all responsibilities in accordance with recognised professional standards; and that it is adequately financed to meet all financial obligations it may be required to meet under the terms of the Purchase Order.

(b) Supplier warrants that the Services will conform in all respects to any description of the Services in the Purchase Order, any Statement of Work and any specifications or other requirements agreed upon between Buyer and Supplier or as varied by agreement between Buyer and Supplier. Without prejudice to any other right or remedy available to Buyer, if Buyer reasonably determines that any work undertaken in relation to the Services does not comply with the warranties contained within this clause 5, Supplier will promptly re-perform the work at no additional charge as soon as reasonably practicable upon receipt of a written request from Buyer.

(c) Supplier warrants that it shall observe, comply with and embody in the provision of the Services and Related Goods all relevant legislation (including statutory requirements) and undertake compliance with all relevant codes of practice and conduct, including British, European and Buyer notified standards in the provision of the Services.

(d) Supplier warrants that the outcome or results of the performance of the Services by Supplier or its Affiliates, Guest Engineers, sub-contractors or agents, and any Related Goods supplied, will be of a satisfactory or merchantable quality, fit for purpose and will conform in all respects to any standards, requirements, descriptions or specifications specified by Buyer and with any laws and regulations in force in the countries in which the Services are to be provided.

(e) Supplier warrants that it has in place, or will obtain, all necessary consents, approvals, authorisations, licences and permissions to provide the Services, including in relation to the provision of any Design Data as contemplated by the Purchase Order (including these terms and conditions).

(f) The warranties given in these terms and conditions are in lieu of all other warranties, express or implied whether by statute or otherwise relating to the Services to the fullest extent permitted by law. Supplier warrants that it will use its best efforts to ensure that its systems, equipment and any other item necessary to perform its obligations under the Purchase Order will not be affected by any error, interruption or other adversity (save in the event of any error, interruption or other adversity directly arising due to Buyer's wilful misconduct), and that should any such event occur Supplier can demonstrate that proper contingency actions are in place to ensure the performance of the Services within the terms of the timescales and deadlines for the provision of the Services.

(g) Supplier's warranty and any rights of Buyer to make a claim under it will be effective even if Buyer has accepted all or a portion of the Services.

6. INSPECTION AND AUDIT

(a) If requested by Buyer, Supplier will permit Buyer (which, for purposes of this clause 6 includes its authorised representatives), during the term of the Purchase Order and for a period of 7 years following the later of the completion of the Services and the date of final payment to Supplier under the Purchase Order, to:

(i) examine and copy all pertinent documents, data and other information relating to the Services, Related Goods, Supplier's obligations under the Purchase Order, any payment made to Supplier or any claim made by Supplier;

(ii) view any facility (including the Service Point) or process relating to the Services, the Related Goods or the Purchase Order, including those relating to production quality; and

(iii) audit any facility or process to determine compliance with the requirements of the Purchase Order.

(b) Any examination under this clause 6 will be conducted during normal Business Hours and upon advance written notice to Supplier. If requested by Buyer, Supplier will use its best efforts to permit Buyer to obtain from the sub-contractors of, and vendors to, Supplier the information and permission to conduct the reviews specified in this clause 6, regardless of any other right Buyer may have to that information or facility.

7. RECORDS AND DESIGN DATA

While performing the Services, Supplier and its employees and agents will develop the Design Data relating to the Engine and engine components. Supplier will keep all Design Data and any other

pertinent records related to the Services, including, documents, data and other written information for at least 7 years following the later of the last delivery of the Services or the date of the final payment to Supplier under the Purchase Order. Upon Buyer's request, Supplier will then either return all of the Design Data and records to Buyer or, at Buyer's request, destroy them (and provide a certificate signed by Supplier's Managing Director that such destruction has taken place). Supplier shall keep all Design Data and records strictly confidential, in accordance with the terms and conditions of the Purchase Order. Notwithstanding the foregoing, unless otherwise prevented from doing so due to binding and written confidentiality restrictions in place with a third party, Supplier shall promptly provide Buyer with any and all copies of any Design Data, information or records, as may be requested by Buyer from time to time.

8. FEES, INVOICING AND PAYMENT

(a) In consideration of the provision of the Services by Supplier, Buyer shall pay the Fees as detailed in the Purchase Order. Buyer will not be obligated to pay Supplier for any fees or charges in excess of the Fees unless such fees and charges have been approved in advance and in writing by Buyer's authorised signatories and reflected in the value of the Purchase Order.

(b) Supplier will invoice Buyer for all Services provided and for any pre-authorised business expenses in accordance with Buyer's then current Payment Terms. If any item or any part of an item shown on an invoice rendered by Supplier is subject to a bona fide dispute or question by Buyer then Buyer shall be entitled to withhold payment of that invoice until such dispute or question has been resolved.

(c) Invoices will accurately document the Services provided during the invoice period and will include such supporting documentation as may be reasonably requested by Buyer to establish the extent to which Services have been rendered.

(d) Buyer will pay all applicable transaction taxes and VAT (collectively "Tax") submitted in a timely manner in accordance with the terms of the Purchase Order. Supplier will separately state Tax on all its invoices and supporting documentation. Supplier is responsible for submitting accurate information required to determine and calculate Tax. Buyer will not be responsible for penalties, interest or fees imposed on Supplier as a result of incorrect calculation or billing of Tax. Supplier will, upon Buyer's request, provide documentation to support the billing and recovery of Tax paid. If so registered, Supplier must provide details of VAT registration numbers to Buyer.

9. INTELLECTUAL PROPERTY RIGHTS

(a) Each of Buyer and Supplier and/or its Affiliates shall retain its rights in its Background IPR.

(b) Supplier shall grant and hereby grants Buyer a non-exclusive, royalty-free, worldwide licence to use or otherwise freely exploit its Background IPR and to grant sub-licences to any third parties to the extent that such Background IPR may hinder or prevent the performance of the Services or otherwise limit Buyer's freedom to exploit the results of the Services as it sees fit.

(c) Buyer shall grant and hereby grants Supplier a non-exclusive, non-transferable, royalty-free, worldwide licence to use and exploit its Background IPR, including the right to make or use products or services incorporating the Background IPR, for the sole purpose of performing the Services. Any licence so granted shall not include the right to sell products or services incorporating the Background IPR to any third party, nor to sub-licence the Background IPR to any third parties, except as strictly required to enable any sub-contractors to provide the Services or with the express prior written consent of Buyer.

(d) In the event that Foreground IPR (including without limitation inventions, designs, discoveries, improvements, concepts, techniques, processes and know-how, whether or not patentable) arises or is created during the term of the Purchase Order and in connection with the Services and any Related Goods or as a result thereof whether by Buyer or Supplier individually or jointly by Buyer and Supplier, it is hereby acknowledged and agreed that all such Foreground IPR, the right to file applications for the protection thereof (including without limitation applications for patent, utility model, design patent, registered design and copyright) in any country, and all Intellectual Property Rights and other rights arising therefrom, shall be the sole and absolute property, in equity and law, of Buyer.

(e) Buyer shall grant and hereby grants Supplier a non-exclusive, non-transferable, royalty-free, worldwide licence to use and exploit the Foreground IPR, including the right to make or use products incorporating the Foreground IPR, for the sole purpose of performing the Services or to provide Parts to Buyer. Any licence so granted shall not include the right to sell products incorporating the Foreground IPR to any third parties nor to sub-licence the Foreground IP to any third parties except with the express prior written consent of Buyer.

(f) Supplier shall promptly notify Buyer of the creation of any and all Foreground IPR promptly

following its coming into existence and shall provide full details of same to Buyer. Such details shall include all information including know-how necessary to adequately protect the Foreground IPR. Supplier shall provide such assistance, and undertake such acts, as reasonably requested by Buyer in order to ensure that full title to all Foreground IPR vests in Buyer.

(g) Notwithstanding anything in clause 9(f) above, on termination of the Purchase Order for any reason whatsoever, Supplier shall at its expense do and execute and shall procure that its employees and any sub-contractor and its employees engaged in the performance of the Services do and execute any further thing or document as may be required by Buyer to give effect to clause 9(d).

(h) Buyer shall bear full and sole responsibility (including costs) for the filing, prosecution and maintenance of applications for the protection of the Foreground IPR.

(i) In relation to Intellectual Property Rights Supplier warrants that:

(i) it does not hold any rights under any Intellectual Property Rights (other than its Background IPR) which may directly or indirectly hinder or prevent the performance of the Services or otherwise limit Buyer's freedom to exploit the results of the Services or Related Goods;

(ii) there are no Intellectual Property Rights (other than its Background IPR) which would be infringed or misused by the performance of the Services or the exercise or exploitation of the results of the Services or use of Related Goods; and

(iii) it is able to conduct the Services and provide Related Goods for use by Buyer without breaching any obligations it may owe to any third party now or, as far as it is at present aware, in the future and hereby undertakes to carry out the Services without breaching any such obligations and further undertakes not to assume any obligations to any third party which would be inconsistent with such undertaking.

(j) For the avoidance of doubt, it is hereby acknowledged and agreed that the Fees include any and all costs as may be incurred in procuring the right to use or otherwise exploit the Intellectual Property Rights of any third party to the extent that such third party rights are used or included in the Services or the results of the Services and which may directly or indirectly hinder or prevent the performance of the Services or the exercise or exploitation of the results of the Services.

(k) All Design Data shall be owned by Buyer, and shall be considered work made by Supplier as agent for Buyer. Buyer shall have all right, title and interest, including but not limited to all right to obtain copyright, patents or other protections, in and to such Design Data and any works used as a basis for creating such Design Data. Neither Supplier, its Affiliates or its sub-contractors or any other party who has copyright to any works comprising any Design Data, shall object to modification and/or translation of the Design Data by Buyer.

(l) Allocation of ownership to the right to file the applications referred to in clause 9(h), and any Intellectual Property Rights arising therefrom if granted and any other intangibles referred to in clause 9(h) among Buyer and its Affiliates shall be in accordance with the terms of the Purchase Order (including these terms and conditions).

(m) Nothing in these terms and conditions shall be construed as conferring upon Buyer or Supplier a right to use in the course of trade or apply any trade mark, trade name or design of the other, whether now existing or created subsequently to the Commencement Date unless written permission is given by the other. Any user rights so granted must be subject to a separate trade mark licence agreement upon the terms to be agreed between Buyer and Supplier.

10. INFRINGEMENT OF INTELLECTUAL PROPERTY

(a) Supplier shall defend, indemnify, keep indemnified and hold harmless Buyer and its Affiliates, their respective officers, directors and employees, in full against all losses, liability, damages, costs and all expenses, including reasonable attorney fees and expert fees, arising out of or in connection with any claims, demands, actions or legal proceedings, alleging infringement of any Intellectual Property Rights in connection with the Services and supply of Related Goods subject to the following conditions:

(i) Buyer shall promptly notify Supplier in writing of any such claim or alleged claim of which it has notice and shall not make any admissions without the prior written consent of Supplier;

(ii) Buyer, at the expense of Supplier, shall allow Supplier to conduct and settle all negotiations and litigation resulting from any such claim provided that such settlement is not likely to have a negative impact on Buyer's reputation;

(iii) at all times in relation to the claim Buyer shall, at Supplier's cost, act in accordance with the reasonable instructions of Supplier and at the request of Supplier afford all reasonable assistance with all negotiations and litigation; and

(iv) any legal costs awarded to Buyer as a result of any litigation in relation to the claim are to be for the account of Supplier and if paid to Buyer shall to the extent incurred by Supplier be paid without

deduction by Buyer to Supplier promptly after receipt by Buyer.

(b) In the event that Supplier is involved in a claim or alleged claim of which it has notice with a third party in connection with Intellectual Property Rights relating to the Services or Related Goods Supplier shall promptly notify Buyer in writing, providing full details of the claim or alleged claim.

11. CONFIDENTIALITY

(a) Supplier acknowledges that in providing Services and Related Goods hereunder, it may receive or have access to Confidential Information. In particular, any Statement of Work provided by Buyer (including drawings, test data and specifications developed in whole or in part by Supplier), and any Design Data or Related Goods created by Supplier shall be Confidential Information of Buyer. In addition, all information which Supplier or its Affiliates or any of its employees, agents or sub-contractors has access to in performing the Services at Buyer's facilities shall be presumed to be Confidential Information. All Confidential Information shall be confidential information and shall be kept strictly confidential by Supplier, regardless of whether such information is marked as "confidential."

(b) Supplier agrees that it shall use at least the same degree of diligence to protect the Confidential Information as it uses to protect its own confidential and sensitive information (being no less than a reasonable level of diligence). Supplier will not disclose any Confidential Information to anyone except to those employees, agents or sub-contractors of Supplier who need access to the Confidential Information in order to perform Services or provide Related Goods and who are bound by conditions of secrecy in respect of such Confidential Information which are no less strict than those imposed on Supplier under these terms and conditions (which Supplier shall, at Buyer's request, diligently enforce at Supplier's expense). Supplier agrees that it will not use the Confidential Information for any purpose other than performing Services and providing Related Goods. In particular Supplier shall not use any Confidential Information in providing goods or services to any other customer of Supplier.

(c) The obligations of confidentiality shall not apply to Confidential Information where:

(i) the Confidential Information is, or becomes (other than through a breach of these terms and conditions or other confidentiality obligations in place) generally known to the public; or
(ii) the Confidential Information is proven by documentary evidence to have been developed independently by Supplier without reference to Buyer's or Buyer's Affiliates' Confidential Information;

or

(iii) the Confidential Information was rightfully received in good faith by Supplier without obligation of confidentiality from a third party; or

(iv) disclosure is required by law, provided that (where reasonably practicable to do so) the disclosing party gives the non-disclosing party prompt written notice of the request for disclosure, cooperates with the non-disclosing party in obtaining protective order or other remedy, and discloses only that portion of the confidential information which it is legally compelled to disclose.

12. TERM AND TERMINATION

(a) The term of the Purchase Order shall commence on the Commencement Date, and subject to earlier termination or extension in accordance with the provisions of these terms and conditions, shall continue for the period as set out on the face of the Purchase Order or Statement of Work (as appropriate) or, if no term is set out on the Purchase Order or Statement of Work, shall continue until the later of (i) the date that the Related Goods are delivered to the Buyer in accordance with the terms of the Purchase Order; (ii) the date that the Design Data is delivered to the Buyer in accordance with the terms of the Purchase Order; or (iii) the date that the Services have been completed in accordance with the terms of the Purchase Order.

(b) Without prejudice to any other right or remedy that Buyer may have against Supplier, it shall have the right to terminate the Purchase Order in whole or in part, with or without cause, and without any liability for such termination, upon at least seven days' written notice to Supplier.

(c) Buyer may by notice in writing to Supplier forthwith terminate the Purchase Order in the event of:

(i) any material breach or persistent breach of Supplier's obligations under the Purchase Order and, where the breach is capable of remedy, Supplier fails to remedy the breach within five days after service of a written notice from Buyer requiring it to be remedied;

(ii) Supplier becomes insolvent, is placed into administration, receivership or liquidation, commences proceedings to be wound up, enters into any voluntary arrangement with its creditors, or on the happening of any similar event according to the laws of its domicile; or

(iii) Supplier undergoes any change in its ownership or disposes of all or a substantial part of its business or assets (other than for the purposes of a legitimate reorganisation) without Buyer's prior written consent, which consent shall not be unreasonably withheld or delayed (acknowledging that it

would be reasonable for Buyer to withhold such consent if it does not receive adequate evidence of Supplier's ability to continue to perform its obligations in accordance with the terms of the Purchase Order).

(d) Upon receipt of any termination notice, Supplier shall discontinue Services on the date stated in such notice.

(e) Without prejudice to clause 12(b), upon termination of the Purchase Order, Supplier shall be paid the amount due for Services that have been performed to an acceptable standard (as determined by Buyer in its reasonable discretion) prior to the date of termination. In addition, Buyer will reimburse those reasonable expenses of Supplier which were approved in advance by Buyer and which were properly incurred prior to termination. Buyer will not be liable for any other costs, expenses, damages or claims of any sort resulting from termination of the Purchase Order, including any indirect damages or consequential loss or for (whether direct or indirect) pure economic loss, loss of profits and loss of business or loss of savings, howsoever caused.

(f) Upon termination or expiry of the Purchase Order, or upon the request of Buyer, Supplier will surrender to Buyer all copies of Confidential Information which are then in Supplier's possession or control in relation to the Services and Related Goods, and all Design Data, memoranda, notes, records, drawings, manuals, software, data held on any electronic device, and all other materials which are the property of Buyer or its Affiliates or which contain information which is confidential or proprietary to Buyer or its Affiliates.

(g) Upon receipt of the notice of termination, Supplier, unless otherwise directed by Buyer, will, at Buyer's sole discretion:

(i) terminate promptly all work under a Purchase Order;

(ii) transfer title and deliver to Buyer the finished work, the work in process, finished and/or draft Design Data and the materials which Supplier produced or acquired in accordance with a Purchase Order, and which Buyer agrees to acquire pursuant to clause 12(d);

(iii) verify/settle all claims by sub-contractors for actual costs that are rendered unrecoverable by such termination, provided the recovery of materials in Supplier's possession or control is ensured;

(iv) take actions reasonably necessary to protect property in Supplier's possession or control in which Buyer has an interest until disposal instruction from Buyer has been received; and/or

(v) upon Buyer's reasonable request, cooperate with Buyer in effecting orderly resourcing of the Services to a different supplier whilst minimising any disruption to Buyer's business.

(h) Termination of the Purchase Order, however arising, shall not affect Buyer's or Supplier's rights, remedies, obligations or liabilities that have accrued up to termination.

13. FORCE MAJEURE

(a) Neither Buyer nor Supplier shall be deemed to be in breach of a Purchase Order for any failure or delay in performing its obligations under the Purchase Order due to a Force Majeure event.

(b) If Buyer's or Supplier's performance of its obligations under the Purchase Order is affected by a Force Majeure event, then:

(i) it shall give written notice to the other, specifying the nature and extent of the Force Majeure event, within two (2) Business Days of becoming aware of the Force Majeure event and will at all times use all reasonable endeavours to mitigate the severity of the Force Majeure event;

(ii) the date for performance of such obligation shall be deemed suspended but only for a period which shall not be longer than the delay caused by such event;

(iii) it shall not be entitled to payment from the other in respect of extra costs and expenses incurred by virtue of the Force Majeure event.

(c) If an event of Force Majeure causes Supplier to be unable materially to comply with any of its obligations under the Purchase Order, Supplier shall, at its own cost, take such steps as to mitigate the effects of the Force Majeure event and Supplier and Buyer shall agree such terms as are appropriate for the continued performance of the Services. If no such terms are agreed within five (5) Business Days of the commencement of the event of Force Majeure (or such longer period as Buyer and Supplier may agree in writing), Buyer may, by giving written notice to Supplier, forthwith terminate the Purchase Order.

14. INDEMNITY AND INSURANCE

(a) Supplier shall indemnify, keep indemnified and hold harmless Buyer and its Affiliates and their respective officers, directors and employees, in full against all losses, liability, damages, costs, claims and all expenses, including reasonable legal fees and expert fees, arising directly out of Supplier's performance of the Services (or lack thereof) and provision of Related Goods or from Supplier's breach of the terms of the Purchase Order (including these terms and conditions), including claims, actions or

legal proceedings alleging:

(i) death, personal injury or property damage; or
(ii) any design or warning defect within the content of the Design Data; or
(iii) any violation by Supplier of any law, rule or regulation applicable to Supplier or Supplier's business, facilities or operations, including in relation to the provision of the Services and any Related Goods; or

(iv) any act or omission of Supplier or its employees, agents or sub-contractors in providing the Services or producing the Design Data, including any injury, loss or damage to persons caused or contributed to by any of their negligence or by faulty design, workmanship or materials.

(b) Neither Supplier nor Buyer shall be liable to the other for any indirect losses arising out of its breach of the terms of the Purchase Order. Notwithstanding the foregoing, nothing under the terms of the Purchase Order shall exclude Buyer or Supplier's liability for (i) death or personal injury arising from its negligence, (ii) fraud or fraudulent misrepresentation; (iii) any other losses which may not be excluded by law.

(c) Upon receipt of a written request from Buyer, Supplier shall, at its sole expense, provide Buyer with reasonable access to documents, records and witnesses in connection with Buyer's defence and resolution and resolution of any claim, action or legal proceedings referred to in clause 14(a) above.

(d) Buyer may, in its sole discretion, require Supplier to defend and resolve any claim, action or legal proceedings referred to in clause 14(a) above. In the event that Buyer so requires, Supplier shall absorb all loss, liability, damages, costs and all expenses, including reasonable legal fees and expert fees, in connection with such defence.

(e) Supplier shall at all times insure and keep itself adequately insured with a reputable insurance company against all insurable liability in connection with the Services and provision of Related Goods and, in particular, against all its liabilities under the Purchase Order and against the consequences of any act or default of Supplier's, Supplier's Affiliates and sub-contractors' employees whilst on the premises of Buyer (or Buyer's Affiliate) and shall, on request, provide Buyer with such evidence of insurance as Buyer may reasonably require. Supplier shall provide all reasonably practicable assistance required by Buyer or its insurers for the purposes of contesting or dealing with any action, claim or matter arising out of Supplier's performance of the Purchase Order or failure to perform. Without prejudice to Supplier's other obligations in this clause 14, Supplier shall arrange Public Liability insurance with reputable insurers, in its own name against the risk assumed under this clause 14 to a value of not less than £5,000,000 per incident.

(f) Supplier shall co-operate as far as reasonably practicable with Buyer and its Affiliates in defending any actions or claims brought against Buyer or its Affiliates, including without limitation alleged product defects or design defects. Such co-operation shall include, but not be limited to, providing documents, drawings, computer files or other materials reasonably requested by Buyer or its Affiliates, and providing any other support reasonably requested by Buyer, its Affiliates or Buyer's professional advisers.

(g) Without prejudice to clause 14(e), Supplier shall arrange suitable and adequate product liability insurance and professional indemnity insurance in its own name and it shall maintain such insurance cover with internationally recognised reputable insurers and such insurance cover shall include defending litigation outside its local jurisdiction (including, but not limited to, within the United States of America).

(h) Neither Buyer nor its Affiliates shall be liable for any costs, loss or damage, liabilities, injuries, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business and like loss) to property or stock of Supplier howsoever caused. Further, Buyer or its Affiliates shall not be responsible for death, injury or illness which may be sustained by any employee, agent, sub-contractor, invitee or licensee of Supplier or for any loss, damage or destruction to the property of any such employee, agent, sub-contractor, invitee or licensee or operations of Supplier unless directly due to the negligent act or wilful default of Buyer or its Affiliates.

15. RIGHT OF SET-OFF

Supplier agrees that all its accounts with Buyer will be administered on a net settlement basis and that Buyer may set off and recoup debits and credits, including Buyer's attorney fees and costs of enforcement, against any of Supplier's accounts regardless of the basis for such debits or credits and without additional notice. In this clause 15 "Buyer" includes Buyer's Affiliates, and "Supplier" includes Supplier's Affiliates.

16. WAIVER AND REMEDIES

No delay or omission by either Buyer or Supplier in exercising the right or power it has pursuant to the

terms of the Purchase Order shall impair or be construed as a waiver of such right or power. No waiver of any breach of any provision of the Purchase Order (including these terms and conditions) shall constitute a waiver of any other breach of such or any other provision. Remedies available to Buyer or Supplier in relation to the Purchase Order shall be cumulative and additional to any other or further remedies implied or available at law, in equity or contained in these terms and conditions.

17. ENTIRE AGREEMENT

The Purchase Order, these terms and conditions, any Buyer Supplemental Terms, the Statement(s) of Work and any documents referred to on the Purchase Order set forth the entire and only agreement and understanding between Buyer and Supplier relating to the provision of the Services as detailed in the Purchase Order and, save in respect of fraudulent misrepresentation, supersedes all negotiations, commitments and representations made prior to the date of acceptance of the Purchase Order.

18. ASSIGNMENT AND SUB-CONTRACTING

- (a) The rights and obligations under the Purchase Order or the Purchase Order itself, either in whole or in part, shall not be assigned or transferred by Supplier without the prior written consent of Buyer.
- (b) Where Supplier becomes entitled to sub-contract the provision of the Services in accordance with clause 3(d), Supplier shall, before engaging any sub-contractors, enter into confidentiality obligations with such sub-contractors which are not less strict than as imposed on Supplier under these terms and conditions (which Supplier shall, at Buyer's request, diligently enforce at Supplier's expense). Where Supplier engages sub-contractors, Supplier shall remain fully responsible and liable for the supply of the Services and the acts and omission of its sub-contractors.

19. NO PARTNERSHIP

Nothing contained in the Purchase Order, and no action taken by Buyer or Supplier pursuant to the Purchase Order, will be deemed to constitute a relationship between Buyer and Supplier of partnership, joint venture, principal and agent or employer and employee. Neither Buyer nor Supplier has, nor may it represent that it has, any authority to act or make any commitments on the other's behalf.

20. BASIC WORKING CONDITIONS AND EMPLOYMENT STATUS

- (a) When Supplier provides the Services and Related Goods Supplier will not: (i) use forced labour, regardless of its form; (ii) employ any person below the age of 15, unless it is part of a government approved job training, apprenticeship or other program that would be clearly beneficial to its participants; or (iii) engage in physically abusive disciplinary practices.
- (b) If Supplier retains sub-contractors to perform the Services or Related Goods, or any part thereof, Supplier will use only sub-contractors that will adhere to the requirements of clause 20 (a) above. Supplier will monitor the sub-contractor's compliance.
- (c) Buyer may retain an independent third party, or request Supplier to retain one reasonably acceptable to Buyer, to: (i) audit Supplier's compliance with the requirements of this clause 20; and (ii) provide Supplier and Buyer with written certification of Supplier's compliance, including areas for potential improvement.
- (d) Supplier will bear the cost of any third-party audit and certification, regardless of which party retained the auditor. Buyer, at its sole option, may accept an audit or certification by Supplier in lieu of a third-party certification.

21. COMPLIANCE WITH ANTI-BRIBERY LAWS

- (a) Supplier shall: (i) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption (the "**Relevant Requirements**"); (ii) not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements; (iii) comply with Buyer's Anti-bribery and Gifts Policies as notified to the Supplier, in each case as Buyer may update them from time to time (the "**Relevant Policies**"); (iv) have and shall maintain in place throughout the term of the Purchase Order its own policies and procedures, to ensure compliance with the Relevant Requirements and the Relevant Policies, and will enforce them where appropriate; and (v) promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Purchase Order.
- (b) Supplier shall ensure that any person associated with the Supplier (including any subcontractor) who is performing services or providing goods, software, data, information or other materials in connection with the Purchase Order does so only in compliance with the Relevant Requirements and the Relevant Policies (together the "**Relevant Terms**"). Supplier shall be responsible for the observance and performance of the Relevant Terms by such persons and shall be directly liable to

Buyer for any breach by such persons of any of the Relevant Terms.

22. SEVERABILITY

If any court of competent jurisdiction finds any term or condition to be unenforceable or invalid in whole or in part, such finding shall not affect the validity of the other provisions or the remainder of the provision in question. If any invalid, unenforceable or illegal provision of the Purchase Order would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

23. PUBLICITY

If Supplier wishes to publicly disclose the existence of its relationship with Buyer in relation to the provision of the Services then Supplier shall not do so without the express prior written consent of Buyer to the form and manner of each such disclosure. Where Buyer has given such consent then Buyer, in its sole discretion, reserves the right to withdraw such consent at any time upon notice to Supplier. Without prejudice to the foregoing, all advertising and promotional materials related to the Buyer or the Services must be approved in advance in accordance with the Supplier Advertising Web-Guide.

24. SURVIVAL

Any terms and conditions above relating to warranties, indemnification, Intellectual Property Rights, infringement, confidentiality, assignment, governing law and dispute resolution shall survive the expiration or termination of the Purchase Order for any reason whatsoever. For the avoidance of doubt clauses 1, 5, 6, 7, 8(d), 9, 10, 11, 12, 14, 15, 17, 21, 22, 23, 24, 25, 26, 27, 28,29 and 30 shall survive termination or expiry of the Purchase Order.

25. NOTICES

(a) Any notice, demand or communication in connection with the Purchase Order will be in writing and may be delivered by hand, first class post, registered post, Special Delivery post, Airmail, international courier or facsimile (but not by e-mail), addressed to the recipient at its registered office or its address, or facsimile number as the case may be. Notices to be sent to Buyer shall be marked for the attention of The Company Secretary.

(b) The notice, demand or communication will be deemed to have been duly served:

(i) if delivered by hand, at the time of delivery;

(ii) if delivered by first class post or Special Delivery post or international courier, 48 hours after being posted (or delivered to the international courier) or in the case of Airmail 10 Business Days after being posted;

(iii) if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post, registered post, Special Delivery post, Airmail or international courier to the other party within 24 hours after transmission;

provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 p.m. on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 a.m. on the next following Business Day (such times being local time at the address of the recipient).

26. THIRD PARTY RIGHTS

(a) Unless otherwise agreed by Buyer, Buyer's Affiliates may, at its/their own option, benefit from the Services and rely on the Deliverables provided by Supplier.

(b) Save as in respect of Buyer's Affiliates, Buyer and Supplier do not intend that any term of the Purchase Order should be enforceable by any person other than Buyer and Supplier.

27. BAILED PROPERTY

Supplier bears all responsibility for loss of, theft of and damage to any property owned by Buyer and in Supplier's possession or control for use in performing a Purchase Order, including responsibility for loss and damage which occurs (howsoever caused) despite Supplier's exercise of reasonable care, but excluding normal wear and tear. Supplier will: (i) properly house and maintain such property on Supplier's premises; (ii) prominently mark it as the property of Buyer; (iii) refrain from commingling it with the property of Supplier or with that of a third party save as required to do so in order to perform the Services; (iv) adequately insure such property against loss or damage; and (v) not move it to another location whether owned by Supplier or a third party, without the prior written consent of Buyer, except in the case of an emergency, Supplier may move such property provided that it gives

Buyer notice that the property has been moved and the location of the property as soon as reasonably practicable. Buyer will have the right to enter Supplier's premises at reasonable times to inspect such property and Supplier's records pertaining thereto. Where permitted by law, Supplier waives any lien that Supplier might otherwise have on any of Buyer's property for work done thereon or otherwise. Supplier will assign to Buyer any claims Supplier has against third parties with respect to Buyer's property. Upon request, Supplier immediately will make such property available for collection by Buyer (or its representatives) and, at Buyer's request, Supplier shall load such property onto vehicles used by Buyer's carrier to transport such property. Supplier will cooperate with Buyer's collection of the property from Supplier's premises.

28. DISPUTE RESOLUTION

(a) Buyer and Supplier will act in good faith and use all reasonable endeavours to resolve any disputes or claims that may arise in connection with the Purchase Order between themselves through their respective managers.

(b) In the event that the representatives of Buyer and Supplier fail to resolve any dispute within 10 Business Days of either Buyer or Supplier serving a notice in writing to the other that a matter is in dispute (a "Dispute Notice"), the matter shall be escalated within a further 5 Business Days to the relevant director of Buyer and of Supplier or anyone directly delegated by those individuals to resolve matters.

(c) If the negotiations referred to in clause 28(b) above should fail to resolve the dispute within 28 days of service of the Dispute Notice, then either Buyer or Supplier may seek legal redress through the non-exclusive jurisdiction of the English courts. Neither Buyer nor Supplier shall be prevented, by any of these terms and conditions, from applying at any time to the English or other appropriate courts for such interim or conservatory measures (including but not limited to injunctive relief or measures relating to the preservation of property) as may be considered appropriate.

(d) In the event of Buyer and Supplier entering into the dispute resolution procedure then, unless Buyer and Supplier agree otherwise in writing, in no circumstances should the provision of the Services be interrupted or delayed by the dispute.

(d) The laws of England and Wales shall apply to the Purchase Order (including these terms and conditions).

29. TOOLING: TITLE, IDENTIFICATION

All right, title, and interest in and to any part of tooling to be paid for by Buyer ("Buyer-owned Tooling") shall pass to Buyer as soon as it is acquired or fabricated in accordance with a Purchase Order. During the term of a Purchase Order, all such Buyer-owned Tooling in the possession of Supplier shall be deemed to be bailed property and shall not be deemed to be a fixture or a part of Supplier's real property. Supplier will (i) properly house and maintain such property on Supplier's premises, (ii) prominently mark it Property of Buyer, (iii) refrain from commingling it with the property of Supplier or with that of a third party, and (iv) adequately insure it against loss or damage and (v) not encumber or move it to another location whether owned by Supplier or a third party, without the prior written consent of Buyer, except in the case of an emergency, Supplier may move Buyer-owned Tooling provided that it gives Buyer notice that Buyer-owned Tooling has been moved and the location of Buyer-owned Tooling as soon as reasonably practicable. Supplier shall indemnify Buyer against any claim adverse to Buyer's ownership of Buyer-owned Tooling, except where such claims directly and wholly result from any acts or omissions of Buyer. To the extent permitted by law, Supplier waives its right to object to the repossession of Buyer-owned Tooling by Buyer in the event Supplier is involved in insolvency proceedings. While in its possession, Supplier, at Supplier's expense, shall maintain Buyer-owned Tooling in first class condition and immediately replace any items which are lost or destroyed or become worn out. All repaired or replaced Buyer-owned Tooling shall be the property of Buyer. Wear, repair and refurbishment of Buyer-owned Tooling is Supplier's responsibility. Title to any modifications, changes or accessions to Buyer-owned Tooling shall vest in Buyer regardless of whether Buyer has reimbursed Supplier for such modification, changes or accessions. Supplier shall keep such records in relation to Buyer-owned Tooling as Buyer may reasonably require. None of Buyer-owned Tooling shall be used in the production, manufacture or design of any goods or materials except to the order of Buyer. To the extent permitted by law, Supplier shall not sell or otherwise dispose of any product using Buyer-owned Tooling to any party other than Buyer except where specifically authorised by Buyer in writing. Supplier's responsibility continues beyond the expiry date of the related Purchase Order. If Buyer-owned Tooling is not utilised to produce any Parts for Buyer for a period of two years, Supplier shall so notify Buyer and request instructions as to the disposition of Buyer-owned Tooling. If Supplier subcontracts all or any portion of the manufacture of

Buyer-owned Tooling, Supplier shall so notify Buyer in advance and obtain for Buyer all of the rights contained in this clause 29 from each such sub-contractor used by Supplier.

30. TOOLING INVOICES, PAYMENT FOR BUYER-OWNED TOOLING

To the extent permitted by applicable law, any payments made by Buyer for Buyer-owned Tooling are expressly intended by Buyer to be held in trust for the benefit of any sub-contractor(s) used by Supplier to produce Buyer- owned Tooling that are covered by such payments and Supplier agrees to hold such payments as trustee in express trust for such sub-contractors until Supplier has paid the sub-contractors in full for Buyer-owned Tooling. Supplier acknowledges and agrees that its sub-contractor is an intended third party beneficiary of the terms of this clause 30 relating to the express trust and as such, notwithstanding clause 26, the tooling sub- contractors shall have the right to enforce these terms directly against Supplier in their own name. Supplier agrees that Buyer has no obligation to Supplier or Supplier's tooling sub-contractor under this clause 30 other than making the payment to Supplier in accordance with a Purchase Order. In the event Supplier's tooling sub- contractor brings an action against Supplier, Supplier agrees that it will not join Buyer in any such action.